No. 19-351

In The Supreme Court of the United States

FEDERAL REPUBLIC OF GERMANY, a foreign state, and STIFTUNG PREUSSICHER KULTURBESITZ,

Petitioners,

v.

ALAN PHILIPP, et al.,

Respondents.

On Writ of Certiorari To The United States Court of Appeals For The D.C. Circuit

JOINT APPENDIX

JONATHAN M. FREIMAN
Counsel of Record
TADHG DOOLEY
BENJAMIN M. DANIELS
DAVID R. ROTH
WIGGIN AND DANA LLP
265 Church Street
P.O. Box 1832
New Haven, CT 06508-1832
(203) 498-4400
jfreiman@wiggin.com

DAVID L. HALL
WIGGIN AND DANA LLP
Two Liberty Place
50 S. 16th Street
Suite 2925
Philadelphia, PA 19102
(215) 998-8310

Counsel for Petitioners

NICHOLAS M. O'DONNELL
Counsel of Record
ERIKA L. TODD
SULLIVAN & WORCESTER LLP
One Post Office Square
Boston, MA 02109
(617) 338-2814
nodonnell@sullivanlaw.com

Counsel for Respondents

Petition For Certiorari Filed September 16, 2019
Certiorari Granted July 2, 2020

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

TABLE OF CONTENTS

TABLE OF CONTENTS—Continued

TABLE OF CONTENTS—Continued

U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:15-cv-00266-CKK

Cause: 28:2201 Declaratory Judgment

Date Filed	#	Docket Text
02/23/2015	1	COMPLAINT against FEDERAL REPUBLIC OF GERMANY, STIFTUNG PREUSSISCHER KULTURBESITZ (Filing fee $ 400 receipt number 0090-4001803) filed by ALAN PHILIPP, GERALD G. STIEBEL. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Civil Cover Sheet, # 9 Summons, # 10 Summons)(O'Donnell, Nicholas) (Entered: 02/23/2015)
02/23/2015		Case Assigned to Judge Colleen Kollar-Kotelly. (md,) (Entered: 02/24/2015)
02/24/2015	2	SUMMONS (2) Issued Electronically as to FEDERAL REPUBLIC OF GERMANY, STIFTUNG PREUSSISCHER KULTURBESITZ. (Attachments: # 1 Notice of Consent, # 2 Consent Form) (md,) (Entered: 02/24/2015)
02/24/2015	3	ORDER Establishing Procedures for Cases Assigned to Judge Colleen Kollar-Kotelly. Signed by Judge

		Colleen Kollar-Kotelly on February 24, 2015. (NS) (Entered: 02/24/2015)
07/14/2015	4	NOTICE of Appearance by Jonathan M. Freiman on behalf of FEDERAL REPUBLIC OF GERMANY, STIFTUNG PREUSSISCHER KULTURBESITZ (Freiman, Jonathan) (Entered: 07/14/2015)
07/14/2015	5	MOTION for Extension of Time to File Answer re 1 Complaint, *and to Set Subsequent Deadlines* by FEDERAL REPUBLIC OF GERMANY, STIFTUNG PREUSSISCHER KULTURBESITZ (Freiman, Jonathan) (Entered: 07/14/2015)
07/14/2015		MINUTE ORDER (paperless). Upon consideration of Defendants' 5 Motion to Extend the Deadline for Responding to the Complaint, and to Set Subsequent Deadlines, to which Plaintiffs consent, it is hereby ORDERED that the Defendants' Motion is GRANTED. Defendants shall answer or otherwise respond to Plaintiffs' Complaint by no later than OCTOBER 30, 2015. To the extent that Defendants file a motion to dismiss as their responsive pleading, the parties shall adhere to the following briefing schedule. Plaintiffs shall file their opposition to a motion to dismiss by no later than FEBRUARY 1, 2016. Defendants

		shall file their reply in support of a motion to dismiss by no later than MARCH 17, 2016. Signed by Judge Colleen Kollar-Kotelly on July 14, 2015. (NS) (Entered: 07/14/2015)
07/14/2015		Set/Reset Deadlines: Answer or responsive pleading due by 10/30/2015. If motion filed: Response due by 2/1/2015. Reply due by 3/17/2016. (dot) (Entered: 07/15/2015)
07/15/2015	6	MOTION for Leave to Appear Pro Hac Vice :Attorney Name – David L. Hall, :Firm – Wiggin and Dana LLP, :Address – Two Liberty Place, 50 S. 16th Street, Suite 2925, Philadelphia, PA 19102. Phone No. – (215) 988-8325. Fax No. – (215) 988-8344 Filing fee $ 100, receipt number 0090-4176510. Fee Status: Fee Paid. by FEDERAL REPUBLIC OF GERMANY, STIFTUNG PREUSSISCHER KULTURBESITZ (Attachments: # 1 Exhibit A – Declaration of David L. Hall in Support of Pro Hac Vice Admission, # 2 Exhibit B – Proposed Order)(Freiman, Jonathan) (Entered: 07/15/2015)
07/15/2015	7	MOTION for Leave to Appear Pro Hac Vice :Attorney Name – Tahlia Townsend, :Firm – Wiggin and Dana LLP, :Address – One Century Tower, 265 Church Street, New Haven, CT

		06510-7001. Phone No. – (203) 498-4339. Fax No. – (203) 782-2889 Filing fee $ 100, receipt number 0090-4176592. Fee Status: Fee Paid. by FEDERAL REPUBLIC OF GERMANY, STIFTUNG PREUSSISCHER KULTURBESITZ (Attachments: # 1 Exhibit A – Declaration of Tahlia Townsend in Support of Pro Hac Vice Admission, # 2 Exhibit B – Proposed Order)(Freiman, Jonathan) (Entered: 07/15/2015)
07/16/2015		MINUTE ORDER (Paperless). The Motions for the Admission Pro Hac Vice of 6 David L. Hall and 7 Tahlia Townsend as counsel for Defendants Federal Republic of Germany and Stiftung Preussischer Kulturbesitz, are hereby GRANTED. Signed by Judge Colleen Kollar-Kotelly on July 16, 2015. (NS) (Entered: 07/16/2015)
10/16/2015	8	Consent MOTION for Leave to File Excess Pages *to briefs in support of a motion to dismiss* by FEDERAL REPUBLIC OF GERMANY, STIFTUNG PREUSSISCHER KULTURBESITZ (Attachments: # 1 Proposed Order)(Freiman, Jonathan) (Entered: 10/16/2015)
10/16/2015	9	ORDER GRANTING Defendants' 8 Consented-to Motion to File Excess Pages. The parties may file briefs regarding the motion to dismiss in

		excess of LCvR 7(e), not to exceed 75 pages for memoranda in support of or in opposition to the motion to dismiss, and 35 pages for Defendants' reply memorandum. Signed by Judge Colleen Kollar-Kotelly on October 16, 2015. (NS) (Entered: 10/16/2015)
10/29/2015	10	MOTION for Leave to Appear Pro Hac Vice :Attorney Name – Benjamin M. Daniels, :Firm – Wiggin and Dana LLP, :Address – One Century Tower, 265 Church Street, New Haven, CT 06510-7001. Phone No. – (203) 498-4350. Fax No. – (203) 782-2889 Filing fee $ 100, receipt number 0090-4297820. Fee Status: Fee Paid. by FEDERAL REPUBLIC OF GERMANY, STIFTUNG PREUSSISCHER KULTURBESITZ (Attachments: # 1 Declaration of Benjamin Daniels, # 2 Proposed Order)(Freiman, Jonathan) (Entered: 10/29/2015)
10/29/2015	11	MOTION for Leave to Appear Pro Hac Vice :Attorney Name – David Roth, :Firm – Wiggin and Dana LLP, :Address – One Century Tower, 265 Church Street, New Haven, CT 06510-7001. Phone No. – (203) 498-4394. Fax No. – (203) 782-2889 Filing fee $ 100, receipt number 0090-4297822. Fee Status: Fee Paid. by FEDERAL REPUBLIC OF

		GERMANY, STIFTUNG PREUSSISCHER KULTURBESITZ (Attachments: # 1 Declaration of David Roth, # 2 Proposed Order)(Freiman, Jonathan) (Entered: 10/29/2015)
10/29/2015	12	MOTION to Dismiss *and Incorporated Memorandum of Law* by FEDERAL REPUBLIC OF GERMANY, STIFTUNG PREUSSISCHER KULTURBESITZ (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Proposed Order) (Freiman, Jonathan) (Entered: 10/29/2015)
10/30/2015		MINUTE ORDER (Paperless). Upon consideration of Defendants' Motions for Admission of Attorney Pro Hac Vice, of 10 Benjamin M. Daniels and of 11 David Roth, the Motions are hereby GRANTED. Signed by Judge Colleen Kollar-Kotelly on October 30, 2015. (NS) (Entered: 10/30/2015)
01/14/2016	13	CONSENT TO THE FILING OF AN AMENDED COMPLAINT by ALAN PHILIPP, GERALD G. STIEBEL, JED LEIBER. (Attachments: # 1 Exhibit 1)(O'Donnell, Nicholas) (Entered: 01/14/2016)
01/14/2016	14	AMENDED COMPLAINT *(First)* against FEDERAL REPUBLIC OF GERMANY, STIFTUNG PREUSSISCHER KULTURBESITZ

		filed by ALAN PHILIPP, JED LEIBER, GERALD G. STIEBEL. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8) (O'Donnell, Nicholas) (Entered: 01/14/2016)
01/14/2016	15	Unopposed MOTION for Extension of Time to File Answer re 14 Amended Complaint, *Plaintiffs Opposition to Defendants Motion to Dismiss, should one be filed, and Defendants Reply to any Opposition by Plaintiffs* by JED LEIBER, ALAN PHILIPP, GERALD G. STIEBEL (O'Donnell, Nicholas) (Entered: 01/14/2016)
01/14/2016		MINUTE ORDER (Paperless). On October 29, 2015, Defendants Stiftung Preussischer Kulturbesitz and the Federal Republic of Germany filed their 12 Motion to Dismiss. Subsequently, on January 14, 2016, Plaintiffs filed their 14 First Amended Complaint, the filing of which was consented to by Defendants pursuant to Federal Rule of Civil Procedure 15(a)(2). As such, the Court DENIES WITHOUT PREJUDICE Defendants' 12 Motion to Dismiss as it does not address the later-filed First Amended Complaint and VACATES dates for briefing the

		Motion as set forth in the Court's Minute Order of July 14, 2015.
		Presently before the Court is the Plaintiffs' 15 Assented-to Motion to Revise Response Deadlines, setting forth a proposed schedule for the parties to respond to the First Amended Complaint. The unopposed Motion is hereby GRANTED. As such, Defendants shall answer or otherwise respond to Plaintiffs' Complaint by no later than MARCH 11, 2016. To the extent that Defendants file a motion to dismiss as their responsive pleading, the parties shall adhere to the following briefing schedule. Plaintiffs shall file their opposition to a motion to dismiss by no later than MAY 11, 2016. Defendants shall file their reply in support of a motion to dismiss by no later than JUNE 10, 2016. Signed by Judge Colleen Kollar-Kotelly on January 14, 2016. (NS) (Entered: 01/14/2016)
01/14/2016		Set/Reset Deadlines: Answer or respond to Complaint due by 3/11/2016. Plaintiffs' Responses Motion to Dismiss due by 5/11/2016. Reply due by 6/10/2016. (dot) (Entered: 01/14/2016)
03/04/2016	16	Consent MOTION for Leave to File Excess Pages by FEDERAL REPUBLIC OF GERMANY,

		STIFTUNG PREUSSISCHER KULTURBESITZ (Attachments: # 1 Text of Proposed Order)(Freiman, Jonathan) (Entered: 03/04/2016)
03/07/2016	17	ORDER granting 16 Motion for Leave to File Excess Pages. Signed by Judge Colleen Kollar-Kotelly on 3/5/16. (dot) (Entered: 03/07/2016)
03/11/2016	18	MOTION to Dismiss *the Plaintiffs' First Amended Complaint [Doc. No. 14]* by FEDERAL REPUBLIC OF GERMANY, STIFTUNG PREUSSISCHER KULTURBESITZ (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Proposed Order)(Freiman, Jonathan) (Entered: 03/11/2016)
05/11/2016	19	Memorandum in opposition to re 18 MOTION to Dismiss *the Plaintiffs' First Amended Complaint [Doc. No. 14]* filed by JED LEIBER, ALAN PHILIPP, GERALD G. STIEBEL. (Attachments: # 1 Declaration of Nicholas M. O'Donnell in Opposition to Defendants' Motion to Dismiss, # 2 Exhibit 1 to Declaration of Nicholas M. O'Donnell, # 3 Exhibit 2 to Declaration of Nicholas M. O'Donnell, # 4 Declaration of Markus H. Stoetzel, # 5 Exhibit 1 to Declaration of Markus H. Stoetzel)(O'Donnell, Nicholas) (Entered: 05/11/2016)

06/10/2016	20	REPLY to opposition to motion re 18 MOTION to Dismiss *the Plaintiffs' First Amended Complaint [Doc. No. 14]* filed by FEDERAL REPUBLIC OF GERMANY, STIFTUNG PREUSSISCHER KULTURBESITZ. (Attachments: # 1 Exhibit A – Thiessen Supplemental Expert Opinion, # 2 Exhibit B – Armbrüster Supplemental Expert Opinion)(Freiman, Jonathan) (Entered: 06/10/2016)
12/21/2016	21	NOTICE OF SUPPLEMENTAL AUTHORITY by JED LEIBER, ALAN PHILIPP, GERALD G. STIEBEL (O'Donnell, Nicholas) (Entered: 12/21/2016)
12/21/2016		MINUTE ORDER (Paperless). As represented by Plaintiffs in their 21 Notice filed with the Court, it appears that the Holocaust Expropriated Art Recovery Act of 2016, H.R. 6130, Pub. L. No. 114-308 ("HEAR Act") may have rendered moot two of Defendants' arguments raised in their 18 Motion to Dismiss the First Amended Complaint. As such, the Court is issuing this Order directing Defendants to set forth their position as to whether or not the HEAR Act moots their arguments that Plaintiffs' claims are barred by the statute of limitations and that Plaintiffs' claims conflict

		with U.S. policy. If Defendants do not believe that these two arguments are mooted by the HEAR Act, they should state the basis for their position. If Defendants agree that the HEAR Act moots these two arguments, they shall advise the Court whether: (1) they seek to file an amended motion to dismiss; or (2) they seek for the Court to exclude the mooted arguments and resolve the remaining arguments in their motion to dismiss as filed. As such, Defendants are directed to file Notice by no later than JANUARY 4, 2017, advising the Court as to their position on the issues outlined in this Order. Signed by Judge Colleen Kollar-Kotelly on December 21, 2016. (NS) (Entered: 12/21/2016)
12/21/2016		Set/Reset Deadlines: Defendants are directed to file Notice by 1/4/2017, advising the Court as to their position. (dot) (Entered: 12/29/2016)
01/04/2017	22	NOTICE by FEDERAL REPUBLIC OF GERMANY, STIFTUNG PREUSSISCHER KULTURBESITZ re Order,,,,, 21 NOTICE OF SUPPLEMENTAL AUTHORITY, Set/Reset Deadlines (Attachments: # 1 Exhibit A – HEAR Act Senate Report)(Freiman, Jonathan) (Entered: 01/04/2017)

01/04/2017	MINUTE ORDER (Paperless). The Court has reviewed the Plaintiffs' 21 notice filed with the Court and Defendants' 22 response thereto. As an initial matter, the Court notes that both filings do not comport with LCvR 5.1(d) as letters are not accepted as a form of pleading in this jurisdiction. However, the Court shall accept these filings in exception to the rule. The parties are instructed to comply with LCvR 5.1(d) in all future filings. Upon review of the parties' notices, the Court has determined that it requires additional information. By no later than JANUARY 11, 2017, Plaintiffs shall file a reply, if any, to Defendants' argument that the Holocaust Expropriated Art Recovery Act of 2016 ("HEAR Act") confirms that Plaintiffs' claims conflict with U.S. foreign policy. By no later than JANUARY 18, 2017, the parties shall file a joint status report with the Court indicating whether the Court may accept the arguments set forth in the parties' notices and any reply from Plaintiffs thereto as supplements to the parties' briefing on Defendants' pending 18 Motion to Dismiss the First Amended Complaint, or whether it is the parties' view that new briefing is required on the issue in light of the

		passage of the HEAR Act. Signed by Judge Colleen Kollar-Kotelly on January 4, 2017. (NS) (Entered: 01/04/2017)
01/04/2017		Set/Reset Deadlines: Plaintiffs' Reply due by 1/11/2017. Joint Status Report due by 1/18/2017. (dot) (Entered: 01/06/2017)
01/11/2017	23	Civil Statement from Plaintiffs on the Holocaust Expropriated Art Recovery Act as it Relates to U.S. Policy in response to the Courts instructions in the January 4, 2017 Minute Order. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8)(O'Donnell, Nicholas) (Entered: 01/11/2017)
01/18/2017	24	Joint STATUS REPORT *(filed with Defendants) on the Need For Further Briefing on the Effect of the Holocaust Expropriated Art Recovery Act pursuant to the Court's Minute Order dated January 4, 2017* by JED LEIBER, ALAN PHILIPP, GERALD G. STIEBEL. (O'Donnell, Nicholas) (Entered: 01/18/2017)
03/31/2017	25	ORDER GRANTING IN PART and DENYING IN PART Defendants' 18 Motion to Dismiss the First Amended Complaint. Defendants' Motion is GRANTED in that

		Plaintiffs' fraud in the inducement (Count V), breach of fiduciary duty (Count VI), breach of the covenant of good faith and fair dealing (Count VII), civil conspiracy (Count VIII), and tortious interference (Count X) claims are DISMISSED as conceded based on Plaintiffs' failure to respond to the argument that these claims do not involve rights in property. Defendants' motion is DENIED in all other respects. Defendants shall file their Answer to the remaining claims in Plaintiffs' First Amended Complaint by no later than APRIL 21, 2017. Signed by Judge Colleen Kollar-Kotelly on March 31, 2017. (NS) (Entered: 03/31/2017)
03/31/2017	26	MEMORANDUM OPINION. Signed by Judge Colleen Kollar-Kotelly on March 31, 2017. (NS) (Entered: 03/31/2017)
03/31/2017		Set/Reset Deadlines: Answer due by 4/21/2017. (dot) (Entered: 03/31/2017)
04/21/2017	27	NOTICE OF APPEAL TO DC CIRCUIT COURT as to 25 Order on Motion to Dismiss,,, by STIFTUNG PREUSSISCHER KULTURBESITZ, FEDERAL REPUBLIC OF GERMANY. Filing fee $ 505, receipt number 0090-4923185. Fee Status: Fee Paid. Parties have been notified.

		(Freiman, Jonathan) (Entered: 04/21/2017)
04/21/2017	28	MOTION for Certification for interlocatory appeal by FEDERAL REPUBLIC OF GERMANY, STIFTUNG PREUSSISCHER KULTURBESITZ (Attachments: # 1 Exhibit A, # 2 Proposed Order)(Freiman, Jonathan) (Entered: 04/21/2017)
04/21/2017	29	MOTION to Stay *Further Proceedings and Incorporated Memorandum of Law* by FEDERAL REPUBLIC OF GERMANY, STIFTUNG PREUSSISCHER KULTURBESITZ (Attachments: # 1 Proposed Order)(Freiman, Jonathan) (Entered: 04/21/2017)
04/24/2017	30	Transmission of the Notice of Appeal, Order Appealed, and Docket Sheet to US Court of Appeals. The Court of Appeals fee was paid this date re 27 Notice of Appeal to DC Circuit Court. (znmw) (znmw). (Entered: 04/24/2017)
04/24/2017		MINUTE ORDER (Paperless). Upon consideration of Defendants' 28 Motion for Certification of the Court's March 31, 2017, and Defendants' 29 Motion to Stay Further Proceedings, the parties are directed to adhere to the following briefing schedule: Plaintiffs shall file

		their response to the pending motions by no later than MAY 5, 2017; and Defendants shall file their reply, if any, to the pending motions by no later than MAY 12, 2017. Signed by Judge Colleen Kollar-Kotelly on April 24, 2017. (NS) (Entered: 04/24/2017)
04/24/2017		USCA Case Number 17-7064 for 27 Notice of Appeal to DC Circuit Court, filed by FEDERAL REPUBLIC OF GERMANY, STIFTUNG PREUSSISCHER KULTURBESITZ. (zrdj) (Entered: 04/24/2017)
04/24/2017		Set/Reset Deadlines: Plaintiffs shall file Responses to 28 and 29 by 5/5/2017. Replies due by 5/12/2017. (dot) (Entered: 04/25/2017)
05/05/2017	31	Memorandum in opposition to re 29 MOTION to Stay *Further Proceedings and Incorporated Memorandum of Law*, 28 MOTION for Certification for interlocatory appeal filed by JED LEIBER, ALAN PHILIPP, GERALD G. STIEBEL. (Attachments: # 1 Text of Proposed Order)(O'Donnell, Nicholas) (Entered: 05/05/2017)
05/12/2017	32	REPLY to opposition to motion re 29 MOTION to Stay *Further Proceedings and Incorporated Memorandum of Law*, 28 MOTION for Certification for interlocatory

		appeal filed by FEDERAL REPUBLIC OF GERMANY, STIFTUNG PREUSSISCHER KULTURBESITZ. (Freiman, Jonathan) (Entered: 05/12/2017)
05/18/2017	33	ORDER GRANTING Defendants' 28 Motion for Certification of the Court's March 31, 2017 Opinion and GRANTING Defendants' 29 Motion to Stay Further Proceedings. All proceedings in this matter shall be STAYED until the D.C. Circuit issues its mandate in Defendants' interlocutory appeal in *Philipp, et al. v. Fed. Republic of Germany, et al.*, Case No. 17-7064 (D.C. Cir.). This Court's 25 Order of March 31, 2017, is AMENDED to add the following statement: *It is further ORDERED that this 25 Order is certified for immediate appellate review because it involves "a controlling question of law as to which there is substantial ground for difference of opinion" and because "an immediate appeal from the order may materially advance the ultimate termination of the litigation." 28 U.S.C. § 1292(b).* Signed by Judge Colleen Kollar-Kotelly on May 18, 2017. (NS) (Entered: 05/18/2017)
05/18/2017	34	MEMORANDUM OPINION. Signed by Judge Colleen Kollar-Kotelly on

		May 18, 2017. (NS) (Entered: 05/18/2017)
06/08/2017	35	Supplemental Record on Appeal transmitted to US Court of Appeals re 27 Notice of Appeal to DC Circuit Court, 33 ORDER GRANTING Defendants' 28 Motion for Certification. USCA Case Number 17-7064. (zrdj) (Entered: 06/08/2017)
08/01/2017	36	NOTICE OF APPEAL by FEDERAL REPUBLIC OF GERMANY, STIFTUNG PREUSSISCHER KULTURBESITZ. Fee Status: No Fee Paid. Parties have been notified. (td) (Entered: 08/02/2017)
08/02/2017	37	Transmission of the Notice of Appeal, Order Appealed (Memorandum Opinion), and Docket Sheet to US Court of Appeals. The Fee remains to be paid and another notice will be transmitted when the fee has been paid in the District Court re 36 Notice of Appeal. (td) (Entered: 08/02/2017)
08/04/2017		USCA Appeal Fees received $ 505 receipt number 4616086459 re 36 Notice of Appeal filed by FEDERAL REPUBLIC OF GERMANY, STIFTUNG PREUSSISCHER KULTURBESITZ (td) (Entered: 08/04/2017)
08/04/2017	38	Supplemental Record on Appeal transmitted to US Court of Appeals

		re 36 Notice of Appeal ;USCA Case Number 17-7117. (td) (Entered: 08/04/2017)
08/04/2017		USCA Case Number 17-7117 for 36 Notice of Appeal filed by FEDERAL REPUBLIC OF GERMANY, STIFTUNG PREUSSISCHER KULTURBESITZ. (td) (Entered: 08/04/2017)
07/16/2019	39	MANDATE of USCA as to 36 Notice of Appeal filed by FEDERAL REPUBLIC OF GERMANY, STIFTUNG PREUSSISCHER KULTURBESITZ, 27 Notice of Appeal to DC Circuit Court, filed by FEDERAL REPUBLIC OF GERMANY, STIFTUNG PREUSSISCHER KULTURBESITZ ; USCA Case Number 17-7064, Consolidated with 17-711 7. (Attachments: # 1 USCA Judgment)(zrdj) (Entered: 07/25/2019)
07/30/2019	40	ORDER DISMISSING WITH PREJUDICE this case as to Defendant Federal Republic of Germany. Signed by Judge Colleen Kollar-Kotelly on 07/30/2019. (DM) (Entered: 07/30/2019)
08/05/2019	41	ORDER: Initial Scheduling Conference set for 8/28/2019 at 11:30 AM in Courtroom 28A before Judge Colleen Kollar-Kotelly. Signed by

		Judge Colleen Kollar-Kotelly on 08/28/19. (DM) (Entered: 08/05/2019)
08/23/2019	42	MEET AND CONFER STATEMENT. (O'Donnell, Nicholas) Modified event title on 8/26/2019 (znmw). (Entered: 08/23/2019)
08/23/2019	43	MOTION to Stay *Pending Petition for Writ of Certiorari To The United States Supreme Court* by FEDERAL REPUBLIC OF GERMANY, STIFTUNG PREUSSISCHER KULTURBESITZ (Attachments: # 1 Appendix A, # 2 Appendix B, # 3 Appendix C, # 4 Appendix D)(Freiman, Jonathan) (Entered: 08/23/2019)
08/28/2019		MINUTE ORDER: On August 28, 2019, the Court held a Status Conference in this matter. During the Status Conference, the parties discussed Defendants' 43 Motion to Stay Pending Petition for Writ of Certiorari to the United States Supreme Court. Plaintiffs will file a Response to Defendants' Motion by SEPTEMBER 6, 2019 and Defendants will file a Reply in support of their Motion by SEPTEMBER 13, 2019. Following the parties' briefing, the Court will issue a written ruling. Defendants are ORDERED not to file any additional Motions to Dismiss until the Court has resolved the Motion to

		Stay and has conducted another Status Conference with the parties. Signed by Judge Colleen Kollar-Kotelly on 8-28-2019. (lcckk3) (Entered: 08/28/2019)
08/28/2019		Minute Entry for proceedings held before Judge Colleen Kollar-Kotelly: Status Conference held on 8/28/2019. Plaintiffs' Response to 43 due by 9/6/2019. Defendants' Reply to 43 due by 9/13/2019. (Court Reporter Lisa Edwards.) (dot) (Entered: 08/29/2019)
09/06/2019	44	Memorandum in opposition to re 43 MOTION to Stay *Pending Petition for Writ of Certiorari To The United States Supreme Court* filed by JED LEIBER, ALAN PHILIPP, GERALD G. STIEBEL. (O'Donnell, Nicholas) (Entered: 09/06/2019)
09/13/2019	45	REPLY to opposition to motion re 43 MOTION to Stay *Pending Petition for Writ of Certiorari To The United States Supreme Court* filed by FEDERAL REPUBLIC OF GERMANY, STIFTUNG PREUSSISCHER KULTURBESITZ. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C)(Freiman, Jonathan) (Entered: 09/13/2019)
09/16/2019	46	NOTICE *of Petition for a Writ of Certiorari Filed in the U.S. Supreme Court* by STIFTUNG

		PREUSSISCHER KULTURBESITZ (Attachments: # 1 Exhibit A (Cert Petition))(Freiman, Jonathan) (Entered: 09/16/2019)
01/29/2020	47	ORDER granting 43 Defendants' Motion to Stay Pending Petition for Writ of Certiorari. Signed by Judge Colleen Kollar-Kotelly on 15-266. (DM) (Entered: 01/29/2020)
01/29/2020	48	MEMORANDUM OPINION re: 43 Defendants' Motion for Stay Pending Petition for Writ of Certiorari. A separate Order accompanies this Opinion. Signed by Judge Colleen Kollar-Kotelly on 1/29/2020. (DM) (Entered: 01/29/2020)

General Docket

United States Court of Appeals
for District of Columbia Circuit

Court of Appeals Docket #: 17-7064

Alan Philipp; Gerald Stiebel; Jed Leiber,

Plaintiffs-Appellees

v.

Federal Republic of Germany, a foreign state; Stiftung Preussischer Kulturbesitz,

Defendants-Appellants

United States of America,

Amicus Curiae

David Toren,

Amicus Curiae for Appellee

04/24/2017	PRIVATE CIVIL CASE docketed. [17-7064] [Entered: 04/24/2017 11:04 AM]
04/24/2017	INTERLOCUTORY NOTICE OF APPEAL [1672310] seeking review of a decision by the U.S. District Court in 1:15-cv-00266-CKK filed by Federal Republic of Germany and Stiftung Preussischer Kulturbesitz. Appeal assigned USCA Case Number: 17-7064. [17-7064] [Entered: 04/24/2017 11:07 AM]

05/03/2017 CLERK'S ORDER [1673711] filed directing party to file initial submissions: APPELLANT docketing statement due 06/02/2017. APPELLANT certificate as to parties due 06/02/2017. APPELLANT statement of issues due 06/02/2017. APPELLANT underlying decision due 06/02/2017. APPELLANT deferred appendix statement due 06/02/2017. APPELLANT notice of appearance due 06/02/2017. APPELLANT transcript status report due 06/02/2017. APPELLANT procedural motions due 06/02/2017. APPELLANT dispositive motions due 06/19/2017; directing party to file initial submissions: APPELLEE certificate as to parties due 06/02/2017. APPELLEE entry of appearance due 06/02/2017. APPELLEE procedural motions due 06/02/2017. APPELLEE dispositive motions due 06/19/2017 [17-7064] [Entered: 05/03/2017 11:44 AM]

06/02/2017 CERTIFICATE AS TO PARTIES, RULINGS AND RELATED CASES [1677983] filed by Federal Republic of Germany and Stiftung Preussischer Kulturbesitz [Service Date: 06/02/2017] [17-7064] (Freiman, Jonathan) [Entered: 06/02/2017 01:37 PM]

06/02/2017 DOCKETING STATEMENT [1677984] filed by Federal Republic of Germany and Stiftung Preussischer Kulturbesitz [Service Date: 06/02/2017] [17-7064]

(Freiman, Jonathan) [Entered: 06/02/2017 01:39 PM]

06/02/2017 ENTRY OF APPEARANCE [1677985] filed by Jonathan M. Freiman and co-counsel David L. Hall and David R. Roth on behalf of Appellants Federal Republic of Germany and Stiftung Preussischer Kulturbesitz. [17-7064] (Freiman, Jonathan) [Entered: 06/02/2017 01:41 PM]

06/02/2017 STATEMENT OF ISSUES [1677986] filed by Federal Republic of Germany and Stiftung Preussischer Kulturbesitz [Service Date: 06/02/2017] [17-7064] (Freiman, Jonathan) [Entered: 06/02/2017 01:42 PM]

06/02/2017 TRANSCRIPT STATUS REPORT [1677987] filed by Federal Republic of Germany and Stiftung Preussischer Kulturbesitz [Service Date: 06/02/2017]. Status of Transcripts: Final – No transcripts are needed for the appeal. [17-7064] (Freiman, Jonathan) [Entered: 06/02/2017 01:46 PM]

06/02/2017 UNDERLYING DECISION IN CASE [1677988] submitted by Federal Republic of Germany and Stiftung Preussischer Kulturbesitz [Service Date: 06/02/2017] [17-7064] (Freiman, Jonathan) [Entered: 06/02/2017 01:47 PM]

06/07/2017 ENTRY OF APPEARANCE [1678684] filed by Nicholas M. O'Donnell on behalf of Appellees Jed Leiber, Alan Philipp and

	Gerald Stiebel. [17-7064] (O'Donnell, Nicholas) [Entered: 06/07/2017 01:32 PM]
06/07/2017	CERTIFICATE AS TO PARTIES, RULINGS AND RELATED CASES [1678685] filed by Jed Leiber, Alan Philipp and Gerald Stiebel [Service Date: 06/07/2017] [17-7064] (O'Donnell, Nicholas) [Entered: 06/07/2017 01:33 PM]
06/08/2017	NOTICE [1678983] received from the Clerk of the U.S. District Court containting Order granting defendants motion for certification [17-7064] [Entered: 06/09/2017 09:55 AM]
08/04/2017	CLERK'S ORDER [1687390] filed consolidating cases 17-7117 (Consolidation started 08/04/2017) with 17-7064 [17-7064, 17-7117] [Entered: 08/04/2017 11:32 AM]
08/07/2017	NOTICE [1687541] received from the Clerk of the U.S. District Court for payment of docketing fee [Case Number 17-7117: Fee Paid] [17-7117] [Entered: 08/07/2017 12:07 PM]
08/21/2017	CLERK'S ORDER [1689522] filed setting briefing schedule: APPELLANT Brief due 10/02/2017. APPENDIX due 10/02/2017. APPELLEE Brief due on 11/01/2017. APPELLANT Reply Brief due 11/15/2017 [17-7064, 17-7117] [Entered: 08/21/2017 11:40 AM]

08/31/2017 UNOPPOSED MOTION [1690995] to extend time to file brief to 12/01/2017 at 11:59 pm filed by Federal Republic of Germany, Stiftung Preussischer Kulturbesitz and Jed Leiber, Alan Philipp and Gerald Stiebel in 17-7064, 17-7117 [Service Date: 08/31/2017] Length Certification: 489 words. [17-7064, 17-7117] (Freiman, Jonathan) [Entered: 08/31/2017 04:17 PM]

08/31/2017 UNOPPOSED MOTION [1690999] to exceed brief, to exceed page limits in brief filed by Federal Republic of Germany, Stiftung Preussischer Kulturbesitz and Jed Leiber, Alan Philipp and Gerald Stiebel in 17-7064, 17-7117 Length Certification: 395 words. [17-7064, 17-7117] (Freiman, Jonathan) [Entered: 08/31/2017 04:24 PM]

09/05/2017 CLERK'S ORDER [1691295] [1689522-3], suspending briefing schedule pending further order of the court [17-7064, 17-7117] [Entered: 09/05/2017 10:11 AM]

09/12/2017 PER CURIAM ORDER [1692592] considering motion to amend the briefing schedule and exceed the word limits [1690999-2]; [1690999-3]; [1690995-2], setting briefing schedule: APPELLANT Brief (not to exceed 15,600 words) due 12/01/2017. APPENDIX due 12/01/2017. APPELLEE Brief (not to exceed 15,600 words) due on 02/16/2018. APPELLANT Reply Brief (not to exceed 7,800 words) due 03/30/2018 Before Judges: Tatel,

Griffith and Pillard. [17-7064, 17-7117] [Entered: 09/12/2017 11:32 AM]

10/18/2017 ENTRY OF APPEARANCE [1699786] filed by Jonathan M. Freiman and co-counsel Benjamin M. Daniels on behalf of Appellants Federal Republic of Germany and Stiftung Preussischer Kulturbesitz in 17-7064, 17-7117. [17-7064, 17-7117] (Daniels, Benjamin) [Entered: 10/18/2017 11:33 AM]

12/01/2017 APPELLANT BRIEF [1707181] filed by Federal Republic of Germany and Stiftung Preussischer Kulturbesitz in 17-7064, 17-7117 [Service Date: 12/01/2017] Length of Brief: 15,589 Words. [17-7064, 17-7117] (Freiman, Jonathan) [Entered: 12/01/2017 06:11 PM]

12/01/2017 ADDENDUM [1707183] to Appellant/Petitioner brief [1707181-2] filed by Federal Republic of Germany and Stiftung Preussischer Kulturbesitz in 17-7064, 17-7117 [Service Date: 12/01/2017] [17-7064, 17-7117] – [Edited 12/06/2017 by LMF] (Freiman, Jonathan) [Entered: 12/01/2017 06:15 PM]

12/01/2017 *JOINT* APPENDIX [1707185] filed by Federal Republic of Germany and Stiftung Preussischer Kulturbesitz in 17-7064, 17-7117. [Volumes: 1] [Service Date: 12/01/2017] [17-7064, 17-7117] (Freiman, Jonathan) [Entered: 12/01/2017 06:19 PM]

12/11/2017 LETTER [1708367] advising of arguing counsel's availability for oral argument filed by Federal Republic of Germany and Stiftung Preussischer Kulturbesitz in 17-7064, 17-7117 [Service Date: 12/11/2017] [17-7064, 17-7117] (Freiman, Jonathan) [Entered: 12/11/2017 03:41 PM]

02/16/2018 APPELLEE BRIEF [1718365] filed by Jed Leiber, Alan Philipp and Gerald Stiebel in 17-7064, 17-7117 [Service Date: 02/16/2018] Length of Brief: 15,428 words (consistent with the Court's Order dated September 12, 2017 that enlarged the word limit for briefs in this case to 15,600 words or fewer). [17-7064, 17-7117] (O'Donnell, Nicholas) [Entered: 02/16/2018 01:02 PM]

02/16/2018 LETTER [1718374] advising of arguing counsel's availability for oral argument filed by Jed Leiber, Alan Philipp and Gerald Stiebel in 17-7064, Alan Philipp, Gerald Stiebel and Jed Leiber in 17-7117 [Service Date: 02/16/2018] [17-7064, 17-7117] (O'Donnell, Nicholas) [Entered: 02/16/2018 01:35 PM]

02/20/2018 *AMENDED* LETTER [1718556] advising of arguing counsel's availability for oral argument filed by Federal Republic of Germany and Stiftung Preussischer Kulturbesitz in 17-7064, 17-7117 [Service Date: 02/20/2018] [17-7064,

17-7117] (Freiman, Jonathan) [Entered: 02/20/2018 12:45 PM]

02/22/2018 AMENDED APPELLEE BRIEF [1719148] filed by Jed Leiber, Alan Philipp and Gerald Stiebel in 17-7064, 17-7117. Length of Brief: 15,428 words [Service Date: 02/22/2018] [17-7064, 17-7117] – [Edited 02/28/2018 by LMF] (O'Donnell, Nicholas) [Entered: 02/22/2018 04:47 PM]

02/23/2018 MOTION [1719340] to participate as amicus curiae [Disclosure Listing: Not Applicable to this Party] filed by David Toren [Service Date: 02/23/2018] [17-7064, 17-7117] – [Edited 02/28/2018 by LMF] (Orseck, Gary) [Entered: 02/23/2018 03:54 PM]

02/28/2018 CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITS [1720025] for motion [1719340-2] filed by David Toren in 17-7117, 17-7064. [17-7117, 17-7064] (Orseck, Gary) [Entered: 02/28/2018 03:04 PM]

02/28/2018 AMICUS FOR APPELLEE BRIEF [1720029] lodged by David Toren in 17-7117, 17-7064 [Service Date: 02/28/2018] Length of Brief: 4,944 Words. [17-7117, 17-7064] – [Edited 02/28/2018 by LMF] (Orseck, Gary) [Entered: 02/28/2018 03:22 PM]

03/01/2018 RESPONSE IN OPPOSITION [1720297] to motion [1719340-2] combined with a MOTION to exceed filed by Federal

Republic of Germany and Stiftung Preussischer Kulturbesitz in 17-7064, 17-7117 [Service Date: 03/01/2018 by CM/ECF NDA] Length Certification: 2,188 Words. [17-7064, 17-7117] (Freiman, Jonathan) [Entered: 03/01/2018 03:18 PM]

03/02/2018 REPLY [1720464] filed by David Toren in 17-7064, 17-7117 to response [1720297-3] [Service Date: 03/02/2018 by CM/ECF NDA] Length Certification: 618 Words. [17-7064, 17-7117] (Orseck, Gary) [Entered: 03/02/2018 05:36 PM]

03/05/2018 RESPONSE IN SUPPORT [1720620] to motion [1719340-2], motion [1720297-2] filed by Jed Leiber, Alan Philipp and Gerald Stiebel in 17-7064, 17-7117 [Service Date: 03/05/2018 by CM/ECF NDA] Length Certification: Document contains 1,126 words.. [17-7064, 17-7117] (O'Donnell, Nicholas) [Entered: 03/05/2018 02:29 PM]

03/09/2018 CLERK'S ORDER [1721467] filed scheduling oral argument on Wednesday, 05/02/2018. [17-7064, 17-7117] [Entered: 03/09/2018 11:28 AM]

03/12/2018 REPLY [1721892] filed by Federal Republic of Germany and Stiftung Preussischer Kulturbesitz in 17-7064, 17-7117 to response [1720620-2] [Service Date: 03/12/2018 by CM/ECF NDA] Length Certification: 440 Words.

[17-7064, 17-7117] (Freiman, Jonathan) [Entered: 03/12/2018 05:49 PM]

03/22/2018 PER CURIAM ORDER [1723321] filed granting the motion of David Toren for leave to participate as amicus curiae in support of affirmance [1719340-2]; granting appellants' motion for additional words in its reply brief [1720297-2] [17-7064, 17-7117] [Entered: 03/22/2018 11:46 AM]

03/22/2018 PER ABOVE ORDER lodged Amicus brief [1720029-2] is filed [17-7064, 17-7117] [Entered: 03/22/2018 11:56 AM]

03/30/2018 APPELLANT REPLY BRIEF [1724569] filed by Federal Republic of Germany and Stiftung Preussischer Kulturbesitz in 17-7064, 17-7117 [Service Date: 03/30/2018] Length of Brief: 9782. [17-7064, 17-7117] (Freiman, Jonathan) [Entered: 03/30/2018 02:18 PM]

04/10/2018 MOTION [1725865] to supplement record filed by Jed Leiber, Alan Philipp and Gerald Stiebel in 17-7064, 17-7117 (Service Date: 04/10/2018 by CM/ECF NDA) Length Certification: This motion complies with Circuit Rule 27(C) because it contains 1,404 words.. [17-7064, 17-7117] (O'Donnell, Nicholas) [Entered: 04/10/2018 11:08 AM]

04/19/2018 PER CURIAM ORDER [1727236] filed allocating oral argument time as follows: Appellants – 15 Minutes, Appellees – 15 Minutes. One counsel per side to argue;

directing party to file Form 72 notice of arguing attorney by 04/25/2018 [17-7064, 17-7117] [Entered: 04/19/2018 10:36 AM]

04/20/2018 RESPONSE IN OPPOSITION [1727411] to motion to supplement record [1725865-2] filed by Federal Republic of Germany and Stiftung Preussischer Kulturbesitz in 17-7064, 17-7117 [Service Date: 04/20/2018 by CM/ECF NDA] Length Certification: 1,834 Words. [17-7064, 17-7117] (Freiman, Jonathan) [Entered: 04/20/2018 10:10 AM]

04/23/2018 FORM 72 submitted by arguing attorney, Jonathan M. Freiman, on behalf of Appellants Federal Republic of Germany and Stiftung Preussischer Kulturbesitz in 17-7064, 17-7117 *(For Internal Use Only: Form is restricted to protect counsel's personal contact information)*. [17-7064, 17-7117] (Freiman, Jonathan) [Entered: 04/23/2018 11:30 AM]

04/25/2018 FORM 72 submitted by arguing attorney, Nicholas M. O'Donnell, on behalf of Appellees Jed Leiber, Alan Philipp and Gerald Stiebel in 17-7064, 17-7117 *(For Internal Use Only: Form is restricted to protect counsel's personal contact information)*. [17-7064, 17-7117] (O'Donnell, Nicholas) [Entered: 04/25/2018 10:30 AM]

04/30/2018 LETTER [1728804] pursuant to FRAP 28j advising of additional authorities filed by Jed Leiber, Alan Philipp and

Gerald Stiebel in 17-7064, 17-7117 [Service Date: 04/30/2018] [17-7064, 17-7117] (O'Donnell, Nicholas) [Entered: 04/30/2018 04:59 PM]

05/01/2018 RESPONSE [1728990] to letter Rule 28j authorities [1728804-2], letter [1728804-3] filed by Federal Republic of Germany and Stiftung Preussischer Kulturbesitz in 17-7064, 17-7117 [Service Date: 05/01/2018 by CM/ECF NDA] Length Certification: 250 words. [17-7064, 17-7117] (Freiman, Jonathan) [Entered: 05/01/2018 03:56 PM]

05/02/2018 ORAL ARGUMENT HELD before Judges Tatel, Griffith and Wilkins. [17-7064, 17-7117] [Entered: 05/02/2018 03:29 PM]

06/08/2018 LETTER [1735131] pursuant to FRAP 28j advising of additional authorities filed by Federal Republic of Germany and Stiftung Preussischer Kulturbesitz in 17-7064, 17-7117 [Service Date: 06/08/2018] [17-7064, 17-7117] (Freiman, Jonathan) [Entered: 06/08/2018 01:56 PM]

06/12/2018 RESPONSE [1735539] to letter Rule 28j authorities [1735131-2], letter [1735131-3] filed by Jed Leiber, Alan Philipp and Gerald Stiebel in 17-7064 [Service Date: 06/12/2018 by CM/ECF NDA] Length Certification: 350 Words. [17-7064, 17-7117] (O'Donnell, Nicholas) [Entered: 06/12/2018 11:36 AM]

07/10/2018	PER CURIAM ORDER [1739863] filed denying motion to supplement record [1725865-2]. Before Judges: Tatel, Griffith and Wilkins. [17-7064, 17-7117] [Entered: 07/10/2018 10:43 AM]
07/10/2018	PER CURIAM JUDGMENT [1739870] filed that the judgment of the District Court appealed from in these causes be affirmed as to the denial of the motion to dismiss, except that on remand, the district court must grant the motion to dismiss with respect to the Federal Republic of Germany, for the reasons in the accompanying opinion . Before Judges: Tatel, Griffith, and Wilkins. [17-7064, 17-7117] [Entered: 07/10/2018 10:49 AM]
07/10/2018	OPINION [1739874] filed (Pages: 20) for the Court by Judge Tatel. [17-7064, 17-7117] [Entered: 07/10/2018 10:51 AM]
07/10/2018	CLERK'S ORDER [1739877] filed withholding issuance of the mandate. [17-7064, 17-7117] [Entered: 07/10/2018 10:53 AM]
07/24/2018	UNOPPOSED MOTION [1742118] to extend time to file petition to 09/07/2018 filed by Federal Republic of Germany and Stiftung Preussischer Kulturbesitz in 17-7064, 17-7117 [Service Date: 07/24/2018] Length Certification: 418 words. [17-7064, 17-7117] (Freiman, Jonathan) [Entered: 07/24/2018 11:49 AM]

08/03/2018 PER CURIAM ORDER [1743941] filed granting appellants' consent motion to extend time [1742118-2]. Any petition is now due on or before September 7, 2018. Before Judges: Tatel, Griffith, and Wilkins. [17-7064, 17-7117] [Entered: 08/03/2018 01:32 PM]

08/13/2018 NOTICE [1745264] to withdraw attorney Daniel Noah Lerman who represented David Toren in 17-7064 and David Toren in 17-7117 filed by David Toren in 17-7064, 17-7117 [Service Date: 08/13/2018] [17-7064, 17-7117] (Lerman, Daniel) [Entered: 08/13/2018 02:19 PM]

09/07/2018 PETITION [1749546] for rehearing en banc filed by Appellants Federal Republic of Germany and Stiftung Preussischer Kulturbesitz in 17-7064, 17-7117 [Service Date: 09/07/2018 by CM/ECF NDA] Length Certification: 3,860 words. [17-7064, 17-7117] (Freiman, Jonathan) [Entered: 09/07/2018 03:03 PM]

09/14/2018 CLERK'S ORDER [1750673] filed directing appellees to file a response to appellants' petition for rehearing en banc [1749546-2] within 15 days of the date of this order. The response may not exceed the length limitations established by the order. Absent an order of the court, a reply to the response will not be accepted for filing. [17-7064, 17-7117] [Entered: 09/14/2018 12:50 PM]

09/14/2018 NOTICE [1750732] of intention to participate as amicus curiae [Disclosure Listing: Not Applicable to this Party] filed by United States of America [Service Date: 09/14/2018] [17-7064, 17-7117] – [Edited 09/14/2018 by LMF] (Ross, Casen) [Entered: 09/14/2018 03:27 PM]

09/14/2018 AMICUS FOR APPELLANT BRIEF [1750808] filed by United States of America [Service Date: 09/14/2018] Length of Brief: 2,537 Words. [17-7064, 17-7117] (Ross, Casen) [Entered: 09/14/2018 06:11 PM]

09/18/2018 UNOPPOSED MOTION [1751161] to extend time to file a response to 10/31/2018 filed by Jed Leiber, Alan Philipp and Gerald Stiebel in 17-7117, 17-7064 [Service Date: 09/18/2018] Length Certification: 309 words.. [17-7117, 17-7064] – [Edited 09/20/2018 by KRM] (O'Donnell, Nicholas) [Entered: 09/18/2018 10:43 AM]

09/20/2018 CLERK'S ORDER [1751765] filed granting appellee's unopposed motion to extend time [1751161-2]. The response is now due on or before October 31, 2018. [17-7064, 17-7117] [Entered: 09/20/2018 12:57 PM]

10/29/2018 RESPONSE [1757586] to petition [1749546-2] filed by Jed Leiber, Alan Philipp and Gerald Stiebel in 17-7064, 17-7117 [Service Date: 10/29/2018 by

CM/ECF NDA] Length Certification: This motion contains 3,869 words.. [17-7064, 17-7117] (O'Donnell, Nicholas) [Entered: 10/29/2018 03:02 PM]

10/30/2018 *CORRECTED* RESPONSE [1757730] to petition for rehearing en banc [1749546-2] filed by Jed Leiber, Alan Philipp and Gerald Stiebel in 17-7064, 17-7117 [Service Date: 10/30/2018 by CM/ECF NDA] Length Certification: This document complies because it contains 3,869 words.. [17-7064, 17-7117] (O'Donnell, Nicholas) [Entered: 10/30/2018 10:43 AM]

01/29/2019 LETTER [1770875] pursuant to FRAP 28j advising of additional authorities filed by Jed Leiber, Alan Philipp and Gerald Stiebel in 17-7064, 17-7117 [Service Date: 01/19/2019] [17-7064, 17-7117] (O'Donnell, Nicholas) [Entered: 01/29/2019 03:32 PM]

05/29/2019 MOTION [1789912] to expedite ruling on petition for rehearing en banc [1749546-2]. filed by Jed Leiber, Alan Philipp and Gerald Stiebel in 17-7117, 17-7064 (Service Date: 05/29/2019 by CM/ECF NDA) Length Certification: This motion contains 846 words.. [17-7117, 17-7064] (O'Donnell, Nicholas) [Entered: 05/29/2019 09:46 AM]

06/18/2019 PER CURIAM ORDER, En Banc, [1793296] filed denying petition for rehearing en banc [1749546-2]. Before

Judges: Garland, Henderson, Rogers, Tatel, Griffith, Srinivasan, Millett, Pillard, Wilkins, Katsas** and Rao*. * Circuit Judge Rao did not participate in this matter. ** A statement by Circuit Judge Katsas, dissenting from the denial of the rehearing en banc, is attached. [17-7064, 17-7117] [Entered: 06/18/2019 10:31 AM]

06/18/2019 PER CURIAM ORDER, En Banc, [1793299] filed denying motion to expedite ruling [1789912-2] Before Judges: Garland, Henderson, Rogers, Tatel, Griffith, Srinivasan, Millett, Pillard, Wilkins, Katsas and Rao*. * Circuit Judge Rao did not participate in this matter. [17-7064, 17-7117] [Entered: 06/18/2019 10:34 AM]

06/24/2019 MOTION [1794272] to stay mandate filed by Federal Republic of Germany and Stiftung Preussischer Kulturbesitz in 17-7064, 17-7117 (Service Date: 06/24/2019 by CM/ECF NDA) Length Certification: 3,721 words. [17-7064, 17-7117] (Freiman, Jonathan) [Entered: 06/24/2019 05:40 PM]

06/28/2019 RESPONSE IN OPPOSITION [1794968] to motion to stay mandate [1794272-2] filed by Jed Leiber, Alan Philipp and Gerald Stiebel in 17-7064, 17-7117 [Service Date: 06/28/2019 by CM/ECF NDA] Length Certification: This document contains 3120 words.. [17-

7064, 17-7117] (O'Donnell, Nicholas) [Entered: 06/28/2019 09:47 AM]

07/03/2019 REPLY [1795763] filed by Federal Republic of Germany and Stiftung Preussischer Kulturbesitz in 17-7064, 17-7117 to response [1794968-2] [Service Date: 07/03/2019 by CM/ECF NDA] Length Certification: 2,348 words. [17-7064, 17-7117] (Freiman, Jonathan) [Entered: 07/03/2019 04:13 PM]

07/11/2019 PER CURIAM ORDER [1796729] filed denying appellants' motion to stay mandate [1794272-2]. Before Judges: Tatel, Griffith and Wilkins. [17-7064, 17-7117] [Entered: 07/11/2019 09:24 AM]

07/16/2019 MANDATE ISSUED to Clerk, U.S. District Court. [17-7064, 17-7117] [Entered: 07/16/2019 02:02 PM]

09/18/2019 LETTER [1807312] received from the Clerk of the Supreme Court of the United States notifying this court of the following activity in the case before it: A petition for writ of certiorari was filed and placed on the docket on 09/18/2019 as No. 19-351. [17-7064, 17-7117] [Entered: 09/19/2019 06:43 PM]

10/22/2019 LETTER [1813919] received from the Clerk of the Supreme Court of the United States notifying this court of the following activity in the case before it: A petition for writ of certiorari was filed and placed on the docket on 10/22/2019

as No. 19-520. [17-7064, 17-7117]
[Entered: 11/01/2019 06:20 PM]

07/02/2020 LETTER [1850067] received from the Clerk of the Supreme Court of the United States notifying this court of the following activity in case No. 19-520: The petition for writ of certiorari was denied on 07/02/2020. [17-7064, 17-7117]
[Entered: 07/02/2020 04:03 PM]

07/02/2020 LETTER [1850068] received from the Clerk of the Supreme Court of the United States notifying this court of the following activity in case No. 19-351: The petition for writ of certiorari was granted on 07/02/2020. [17-7064, 17-7117]
[Entered: 07/02/2020 04:03 PM]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Alan PHILIPP, Gerald G. STIEBEL, and Jed R. LEIBER, 1155 N. La Cienega Boulevard West Hollywood, CA 90069, Plaintiffs, v. FEDERAL REPUBLIC OF GERMANY, a foreign state, and STIFTUNG PREUSSISCHER KULTURBESITZ, Defendants.	Case No. 15-cv-00266

FIRST AMENDED COMPLAINT

(Filed Jan. 14, 2016)

This is a civil action by plaintiffs Alan Philipp ("Philipp"), Gerald G. Stiebel ("Stiebel"), and Jed R. Leiber ("Leiber," together with Philipp and Stiebel, the "plaintiffs"), for the restitution of a collection of medieval relics known as the "Welfenschatz" or the "Guelph Treasure" now wrongfully in the possession of the defendant Stiftung Preussischer Kulturbesitz, a/k/a the Prussian Cultural Heritage Foundation (the "SPK"). The SPK is an instrumentality of the defendant Federal Republic

of Germany ("Germany," together with the SPK, the "defendants").

INTRODUCTORY STATEMENT

1. This is an action to recover the Welfenschatz, a unique collection of medieval relics and devotional art that was sold by victims of persecution of the Nazi regime under duress, and far below actual market value. Those owners were a consortium of three art dealer firms in Frankfurt: J.&S. Goldschmidt, I. Rosenbaum, and Z.M. Hackenbroch (together, the "Consortium"). Zacharias Max Hackenbroch ("Hackenbroch"), Isaak Rosenbaum ("Rosenbaum"), Saemy Rosenberg ("Rosenberg"), and Julius Falk and Arthur Goldschmidt ("Goldschmidt") were the owners of those firms, together with plaintiffs' ancestors and/or predecessors-in-interest in this action.

2. This sale to the Nazi-controlled State of Prussia on June 14, 1935, via a manipulated sham transaction, was spearheaded by the Dresdner Bank, which was acting on behalf and by order of the two most notorious Nazi-leaders and war criminals, Hermann Goering ("Goering") and the German dictator, the "Führer" Adolf Hitler ("Hitler"), themselves. The transaction relied on the atmosphere of early Nazi terror, in which German Jews could never be arms'-length commercial actors.

3. This is also an action to address a second victimization suffered by the Plaintiffs. Germany advances the pretense that it has enacted procedures to

address Nazi-looted art, but the reality is quite different. The sham process to which the Plaintiffs were subjected in 2014 provides additional justification for this action.

4. The coerced sale of the Welfenschatz resulted in payment of barely 35% of its market value to the Consortium—or even as little as 15%, according to German state museum professionals contemporaneous to the exchange. That money was never fully at the Consortium's disposal even after payment (and consisted partly of other artworks that were worth nothing like their promised value). The proceeds, such as they were, were then also subjected to confiscatory "flight taxes"—the extortionate payments that Jews had to pay for the privilege of escaping with their lives.

5. Most critically with respect to the illegitimacy of the 1935 sale, they were Jewish and regarded by the National Socialists as traitors and enemies of the Germanic state, in line with the corrupt ideology of Hitler's racist and inhuman manifesto *Mein Kampf*. These Jewish art dealers were viewed as parasites selling off cultural items at the heart of the Nazi identic for self-gain and for damaging and harming the German identity.

6. Iconic Germanic art was at the core of the Nazi worldview, and the Welfenschatz was the kind of art in general, and the specific artworks in particular, that the Nazis desperately wanted, and for which they would stop at nothing. The Consortium's Jewish heritage

placed it within the Nazis' grasp after the party's ascension to power in Germany.

7. The foregoing, without more, is sufficient under longstanding principles of international law to establish that the 1935 transaction was illegitimate. Any sale of property in Nazi Germany by Jewish owners—let alone to the Nazi-run state itself—was presumptively under duress, illegitimate, and void. Were Germany to claim otherwise, it would be explicitly endorsing—in 2015—the plunder of Goering (part of whose collection, it should be said, decorated the rooms of the German chancellor's office, the "Bundeskanzleramt," as recently as 2014 until a journalist called attention to it).

8. There is, however, considerably more. Specifically, after the Nazi seizure of power in 1933 and the spasmodic violence and intimidation towards Jews, the boycotting of Jewish business, and the eventual elimination of Jews from all aspects of civic life, high ranking Nazis targeted the Welfenschatz, specifically, by virtue of the vulnerability of its Jewish owners, who were publicly accused of selling national treasures and who became public enemies as a result. The choice they faced was clear: their property or their lives.

9. Infamous criminals Hitler, Goering, Bernhard Rust ("Rust"), and Hjalmar Schacht ("Schacht") among them, were all involved in explicit correspondence whose intent was to "save the Welfenschatz" for the German *Reich* from these declared enemies of the state.

10. After the Nazi-takeover of power in Germany, and as a direct and proximate result of the historic persecution that was the official policy of the State of Prussia and the German Reich, the members of the Consortium faced catastrophic economic hardship. Starting from day one, the Nazi-regime was engaged in spreading fear, panic, and violence in these early days of terror as part of the ongoing so-called "National Socialist revolution" in Germany. Both the early unlawful laws of the new Germany, the anti-Semitic riots, the nationwide boycotts of Jewish businesses, and the growing permanent, pseudo-legal monitoring of Jews by the "Nazified" administrative bodies, first and foremost by the German tax authorities, directly affected these art dealers' lives and businesses. Means of systematic disenfranchisement, discrimination, and terror, fomented by the Third Reich's officials, caused also the three art dealers' sale revenues to fall virtually to zero within the shortest period of time and made it impossible thereafter for any of them to earn a living in Germany. On information and belief, the Consortium were targeted by the *Geheime Staatspolizei* (Gestapo) and subjected to direct personal threats of violence for being Jews and for trying to sell the Welfenschatz fairly.

11. The Nazis' crowning touch was to intercede just when a willing fair market buyer for the Welfenschatz appeared, to dictate that any further arms'-length negotiations cease, through which the Consortium could have realized the value of its property.

12. With the market duly fixed, and their own situation having descended into ahistorical levels of persecution, humiliation, and risk, the Consortium relented in 1935. From the Consortium's perspective, the "deal"—for 4.25 million RM (barely 35% of its actual value) split and partly paid only into a blocked account—was a predicament and without any alternative.

13. Soon after Goering, by then hailed as the "savior of the Welfenschatz," had forcefully and punitively "rescued" the collection from the Jews, as highlighted in his biography of 1940, he presented the Welfenschatz as a personal "surprise gift" to Hitler himself at a ceremony in November 1935.

14. In 2014, the Plaintiffs, as heirs to the Consortium, suffered a parallel victimization. Despite Germany's international commitments to "fair and just" solutions with respect to Nazi-looted art, it has enacted no meaningful procedures or laws to address victims of art looted and sales under duress. Worse, it has only appointed an "Advisory Commission" that issues only non-binding recommendations, which are not adjudications of any property rights.

15. That Advisory Commission, since being established in 2003 as a governmental entity, has shown a disturbing tendency to ignore longstanding principles of international law—chief among them the unassailable principle that a sale by owners like the Consortium in Nazi Germany was by definition coercive and void. Instead, in successive decisions the

Advisory Commission has sought to revise history with respect to the treatment of Jews in Germany in 1935, disqualifying any notion that Germany makes "fair and just solutions" available to victims and their heirs.

16. These failures leave the Plaintiffs no choice but to seek the present relief.

PARTIES

17. Philipp is an individual, citizen of the United Kingdom, and a resident of London, England, UK. He is the grandson and sole legal successor to the estate of the late Zacharias Max Hackenbroch, who was the sole owner of the former Hackenbroch art dealers.

18. Stiebel is an individual and a United States citizen who resides in Santa Fe, New Mexico. He is the great-nephew of the late Isaak Rosenbaum, who was co-owner of I. Rosenbaum art dealers with Saemy Rosenberg, and legal successor to Rosenbaum's estate. He brings these claims on behalf of himself and the heirs of Isaak Rosenbaum.

19. Leiber is an individual and a United States citizen who resides in West Hollywood, California. He is the grandson of Saemy Rosenberg, and the sole legal heir to Saemy Rosenberg's rights in the Welfenschatz and related events. He is also a great-nephew of Isaak Rosenbaum, and partly a successor to Rosenbaum's estate.

20. Phillip, Stiebel, and Leiber are together the assignees of the claims of Julius Falk Goldschmidt by

written instrument and the authorized agents in fact for the heirs of Arthur Goldschmidt, who together were the sole owners of the J.&S. Goldschmidt firm. Phillip, Stiebel, and Leiber bring this case together under that authority, whether by independent legal assignment as referenced further below or by agreement between the parties and their counsel.

21. Germany, a/k/a the *Bundesrepublik Deutschland*, is a sovereign nation comprised of the 16 federal states ("Länder"). Germany is the political—and under international law, the legal—successor to the German *Reich* a/k/a the *Third Reich* a/k/a Nazi Germany. Germany was established as West Germany in 1949 from the 11 Länder, in the Western-occupied areas of the Third Reich (including West Berlin), and absorbed the remaining 5 Länder as part of reunification in 1990.

22. The SPK is the successor-in-interest to the Free State of Prussia (the "Freistaat Preussen"), a political subdivision of the German Weimar Republic and later the Third Reich—with respect to all interests in cultural property and fine art. The SPK is a foundation under German law, erected by the German parliament in 1957, and an instrumentality of Germany. The SPK operates by and through its President Professor Dr. Hermann Parzinger. The SPK's board consists of representatives from the German Federal government, and from its political subdivisions, the 16 *Länder*.

JURISDICTION AND VENUE

23. This Court has subject matter jurisdiction over all defendants pursuant to 28 U.S.C. § 1330 and 28 U.S.C. §§ 1605-07 (the Foreign Sovereign Immunities Act). Process was served on all defendants pursuant to 28 U.S.C. § 1608.

24. The defendants are not immune from suit, under either the so-called "expropriation exception" of 28 U.S.C. § 1605(a)(3), or the so-called "commercial activity exception of 28 U.S.C. § 1605(a)(2), all as alleged in further detail herein.

25. This action concerns rights in property taken by the State of Prussia and/or the German Reich, and/or Goering, in his capacity as Prime Minister of the State of Prussia in 1935, in violation of international law, within the meaning of 28 U.S.C. § 1605(a)(3). That taking included, *inter alia* and without limitation the following:

i. The Welfenschatz was acquired by the Nazi State of Prussia to present it as a personal gift to Hitler. It served no public purpose, but was made for personal gain of the Nazi leaders and their reputation.

ii. In addition, their takings were discriminatory since the art dealers were Jewish and therefore belonged to a persecuted group, and the collection was wrongfully appropriated not least because they were regarded as state's enemies for holding the iconic Welfenschatz.

iii. Further, the German Government has not yet returned the collection to the plaintiffs or justly compensated them for the value of the collection. Without compensation, this taking cannot be valid.

iv. Dresdner Bank and the Nazi-State of Prussia gained possession of the Welfenschatz in a joint effort by setting up a scheme of manipulation, coercion, and terror. In violation of international law, they took the collection from plaintiffs' predecessors-in-interest in order to "Aryanize," to "rescue," and to get hold of the collection for *völkisch* reasons in accordance with the National Socialists' policy, which in its entirety was condemned as inhuman and void by the Allies and the United States Government after 1945.

v. Dr. Robert Schmidt, former director of the Berlin Schlossmuseum and a key actor in the matter at hand, intentionally misled the Allied Forces and the United States Military government for Germany and Bavaria in the postwar-era about the true nature of the acquisition of the collection in order to protect himself and in order to prevent restitution of the collection to the art dealers, based on and granted by Allied Military law. The current German Government, when it learned of the art dealers' heirs' rights to the collection of the Welfenschatz, adopted Schmidt's cover-up and deceived the heirs as to the circumstances of its acquisition of the collection.

vi. The defendants, Germany and the SPK, wrongfully assert ownership over the collection in furtherance of the taking in violation of international law.

vii. Germany, in its capacity as the political-legal successor of the Nazi Third Reich, is not immune from suit for its complicity in and perpetuation of the discriminatory appropriation of the Welfenschatz collection. Among other things, violations of Germany's obligations under the 1907 Hague Convention on the Laws and Customs of War on Land, and Germany's official repudiation after 1949 of all Nazi transactions bar any defense that this transaction was legitimate and not coercive.

viii. The policy of the United States of America since at least 1945 has been to undo the forced transfers and restitute identifiable property to the victims of Nazi persecution wrongfully deprived of such property and, with respect to claims asserted in the United States for restitution of such property, to relieve American courts from any restraint upon the exercise of their jurisdiction to pass upon the validity of the acts of the Nazi officials. *See* Press Release No. 296, "Jurisdiction of United States Courts Re Suits for Identifiable Property Involved in Nazi Forced Transfers," reprinted in *Bernstein v. N.V. Nederlandsche-Amerikaansche*, 210 F2d 375, 375-76 (2d Cir. 1954).

26. Germany and the SPK are engaged in commercial activity within the United States, within the meaning of 28 U.S.C. § 1605(a)(3), including but not limited to the following:

i. The SPK engages in regular exhibitions within the United States by loaning objects to museums in the United States from the collections of the museums administered by the SPK. By way of example but without limitation, the SPK loaned objects to an exhibition entitled "Byzantium and Islam Age of Transition" at the Metropolitan Museum of Art in New York in 2012. The SPK also licensed photographs of its collection for inclusion in the catalogues of those exhibitions, which are sold and marketed throughout the United States (including in the District of Columbia) by retail and Internet sales.

ii. The SPK licenses images of its collection to the general public throughout the United States (including the District of Columbia) on an ongoing basis, including but not limited to licensing relationships with Art Resource in New York, and the United States National Holocaust Memorial Museum in the District of Columbia.

iii. The SPK solicits subscriptions to its newsletters, solicitations that reach the District of Columbia, among other parts of the United States. SPK-administered museums seek to and sell entrance tickets to the Berlin museums to patrons in

the United States, including but not limited to patrons in the District of Columbia.

iv. The Museum of Decorative Arts ("Kunstgewerbemuseum") in Berlin, administered by the SPK and the current location of the Welfenschatz, publishes and sells a book entitled *Kunstgewerbemuseum Berlin* within the United States of the highlights of its collection, including but not limited to within the District of Columbia. The Welfenschatz features prominently in this catalogue, in particular the famous *Kuppelreliquiar* (the "Chapel Reliquary")—which is depicted on the very cover of the book.

v. The Kunstgewerbemuseum in Berlin, administered by the SPK and the location of the bulk of the Welfenschatz, publishes and sells a book entitled *Katalog des Kunstgewerbemuseums* (*Catalogue of the Kunstgewerbemuseum*) within the United States, including but not limited to within the District of Columbia. The Welfenschatz features prominently in this catalogue, and is referred to as such for any object that is part of the Welfenschatz.

vi. The Kunstgewerbemuseum in Berlin, administered by the SPK and the location of the bulk of the Welfenschatz, publishes and sells a book entitled *Schätze des Glaubens: Meisterwerke aus dem Dom-Museum Hildesheim und dem Kunstgewerbemuseum*

Berlin (*Treasures of Belief: Masterworks from the Hildesheim Cathedral Museum and the Kunstgewerbemuseum Berlin*), within the United States, including but not limited to within the District of Columbia. The Welfenschatz features prominently in this catalogue as well.

vii. The SPK has announced plans to publish in 2015 and has arranged for presales of a book entitled *The Neues Museum: Architecture, Collections, History* within the United States, including but not limited [to] the District of Columbia.

viii. On information and belief, the Bodemuseum in Berlin, administered by the SPK, has a staff exchange program with the Metropolitan Museum of Art in New York.

ix. The SPK offers research grants to academics within the United States, including within the District of Columbia.

x. On information and belief, academic conferences organized and administered by the SPK include solicitations to academics in the United States (including the District of Columbia) to contribute and participate.

xi. The SPK publishes and sells a book entitled *Original und Experiment: Ausstellung der Stiftung Preußischer Kulturbesitz aus der Antikensammlung der Staatlichen Museen zu Berlin* (*Original and Experiment: Exhibition by the Stifttung Preußischer*

Kulturbesitz from the Antiques Collection of the State Museums in Berlin) within the United States, including but not limited to the District of Columbia.

xii. The SPK publishes and sells a book entitled *Digital Resources from Cultural Institutions for Use in Teaching and Learning: A Report of the American/German Workshop* within the United States, including but not limited to within the District of Columbia.

xiii. The SPK publishes and sells a book entitled *Schdtze Der Weltkulturen in den Sammlungen Der Stiftung Preussischer Kulturbesitz (Treasures of World Cultures in the Collections of the Stiftung Preussischer Kulturbesitz*) within the United States, including but not limited to within the District of Columbia.

xiv. The SPK participated in an exhibition National Gallery of Art in the District of Columbia entitled *Dürer And His Time: An Exhibition From The Collection Of The Print Room, State Museum, Berlin Stiftung Preussischer Kulturbesitz*, including the loan of works of art from the SPK. The SPK contributed further to the catalogue from that exhibition, which is sold in the United States, including but not limited to within the District of Columbia.

xv. The SPK publishes and sells an annual report entitled *Prussian Cultural Property:*

25 Years in Berlin, Collecting, Researching, Educating: from the Work of the SPK 1961-1986 (Annual Report of the SPK) or *Preussischer Kulturbesitz: 25 Jahre in Berlin, Sammeln, Forschen, Bilden: aus der Arbeit der Stiftung Preussischer Kulturbesitz 1961-1986 (Jahrbuch Preussischer Kulturbesitz)* (as well as other similar editions in other years) within the United States, including but not limited to within the District of Columbia.

xvi. The SPK publishes and sells a book entitled *Kinderbildnisse aus vier Jahrtausenden: Aus den Sammlungen der Stiftung Preussischer Kulturbesitz Berlin* (*Children 's Pictures from Four Millennia: from the Collections of the Prussian Cultural Heritage Foundation*) within the United States, including but not limited to within the District of Columbia.

xvii. The SPK publishes and sells copies of the law that gave rise to its creation, the *Gesetz Zur Errichtung Einer Stiftung "Preuss ischer Kulturb es it" Und Zur Übertragung Von Vermögenswerten Des Ehemaligen Landes Preussen Auf Die Stiftung* (*Law for the Creation of a Foundation "Prussian Cultural Heritage" and the Transfer of Property from the Former State of Prussia*) within the United States, including but not limited to within the District of Columbia.

27. On information and belief, Germany engages in a broad range of commercial activity in the United States, including but not limited to the commercial promotion of German companies and industries and the solicitation of American visitors to German museums, including but not limited to those administered by the SPK.

28. Jurisdiction is also proper in this action pursuant to 28 U.S.C. § 1605(a)(2) and the recent guidance of the Supreme Court in *OBB Personenverkehr v. Sachs* because the defendants engage in commercial activity outside the territory of the United States with respect to the Welfenschatz in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States. Specifically, the defendants derive from the Welfenschatz itself through licensing and other activities, revenue in the United States that rightfully could be earned by the plaintiffs absent the defendants' wrongful possession. Plaintiffs invoke the commercial activity exception of 28 U.S.C. § 1605(a)(2) solely with respect to Count IV for Unjust Enrichment, and do not allege that the Court has jurisdiction over the underlying allegations for title to the Welfenschatz pursuant to the commercial activity exception.

29. Venue is proper in the District of Columbia against Germany pursuant to 28 U.S.C. § 1391(f)(4) as a case brought against a foreign state (Germany), and venue is proper in the District of Columbia against the SPK pursuant to 28 U.S.C. § 1391(f)(3) because the SPK is an agency or instrumentality of Germany (a

foreign state) and the SPK is doing business within the District of Columbia, *inter alia*, as alleged above.

FACTUAL ALLEGATIONS

The Welfenschatz and the Consortium

30. The Welfenschatz consists of several dozen medieval reliquary and devotional objects that were originally housed in the *Braunschweiger Dom* (Brunswick Cathedral) in Germany. Although dating primarily from the 11th to the 15th century, the collection acquired its commonly-known name hundreds of years later when it passed into the hands of the Royal House of Brunswick-Lüneburg, and later acquired the name Welfenschatz because of its association with one of the branches of the "Welfenhaus", or "House of Guelph."

31. The portion of Welfenschatz that is wrongfully in the possession of the SPK consists of the following objects:

i. Guelph Cross (*Welfenkreuz*);

ii. Portable Altar With Embossed Silver Figures (*Tragaltar mit Silberfiguren*), 3rd quarter, 13th century;

iii. Demetrius Tablet (*Demetrius-Tafel*), 12th century;

iv. Tablet Shaped Portable Alter with Agate Slab (*Tafelförmiger Tragaltar mit Achatplatte*), ca. 1200;

v. Tablet Shaped Portable Alter with Slab of Rock Crystal (*Tafelförmiger Tragaltar mit Bergkristallplatte*);

vi. Rectangular Casket with Painted Ivory Tablets (*Rechteckiger Kasten mit Bemalten Elfenbeinplättchen*);

vii. Eight-Cornered Casket with Lid (*Achteckiger Deckelkasten mit Bleibeschlag*);

viii. Portable Altar of Adelvoldus (*Tragaltar des Adelvoldus*);

ix. Portable Altar With Crystal Columns (*Tragaltar mit Kristallsäulchen*);

x. Standard Cross Borne by Three Lions (*Standkreuz, von drei Löwen getragen*);

xi. Portable Altar of Eilbertus (*Tragaltar des Eilbertus*);

xii. Portable Altar with the Cardinal Virtues (*Tragaltar mit den Kardinaltugenden*);

xiii. Walpurgis Casket (*Walpurgis-Kasten*);

xiv. Portable Altar with Abraham and Melchizedek (*Tragaltar mit Abraham und Melchisedek*);

xv. Chapel Reliquary (*Kuppelreliquiar*);

xvi. Highly Colored Reliquary Casket (*Der stark-farbige Reliquienkasten*);

xvii. Small Reliquary Casket with Champlevé Enamel (*Kleiner Reliquienkasten mit Grubenschmelz*);

xviii. Arm Reliquary of St. Sigismund (*Armreliquiar des Hlg. Sigismund*);

xix. Arm Reliquary of St. Innocentius (*Armreliquiar des. Hlg. Innocentius*);

xx. Arm Reliquary of St. Theodorus (*Armreliquiar des. Hlg. Theodorus*);

xxi. Arm Reliquary of St. Caesarius (*Armreliquiar des. Hlg. Caesarius*);

xxii. Arm Reliquary of St. Bartholomew (*Armreliquiar des. Hlg. Bartholomaeus*);

xxiii. Arm Reliquary of St. Lawrence (*Armreliquiar des. Hlg. Laurentius*);

xxiv. Reliquary in the Form of a Portable Altar in Wood (*Tragaltarförmiges Reliquiar aus Holz mit Steinen besetzt*);

xxv. Reliquary in the Shape of a Chest, 12th/13th Century (*Reliquiar in Truhenform, 12/13. Jhdt.*);

xxvi. Reliquary in Chest Form (*Reliquiar in Truhenform*);

xxvii. Portable Altar in Tablet Form (*Tafelförmiger Tragaltar*);

xxviii. Tablet-Shaped Portable Altar, 12th Century (*Tafelförmiger Tragaltar, 12. Jhdt.*);

xxix. Head Reliquary of St. Cosmas (*Kopfreliquiar des Hlg. Cosmas*);

xxx. Head Reliquary of St. Blasius (*Kopfreliquiar des Hlg. Blasius*);

xxxi. Plenar for Sundays (*Plenar für Sonntage*);

xxxii. Plenar of Duke Otto the Mild (*Plenar Herzog Otto des Milden*);

xxxiii. Arm Reliquary of St. George (*Armreliquiar des Hlg. Georg*);

xxxiv. Wooden Casket with Painted Heraldic Symbols (*Holzkasten mit Wappenmalerei*);

xxxv. Relic Monstrance with Ivory Reliefs (*Reliquienmonstranz mit Elfenbeinreliefs*);

xxxvi. Relic Cross on a Gilded Copper Base (*Reliquienkreuz auf Fuss/Kl. Vergoldetes Kupferstandkreuz*);

xxxvii. Small Folding Altar with Foot (*Klappaltärchen auf Fuss mit Elfenbeinerner Madonnenstatuette*);

xxxviii. Relic Capsula (*Reliquienkapsel/Agnus Dei*) *mit Anna Selbdritt*;

xxxix. Turned Box With Lid (*Gedrehte Deckelbüchse*);

xl. Arm Reliquary of St. Mary Magdalene (*Armreliquiar der Hlg. Maria Magdalena*);

xli. Arm Reliquary of One of the Ten Thousand Warriors (*Hölzernes Armreliquiar eines der zehntausend Krieger*);

xlii. The Large Relic Cross (*Das Grosse Reliquienkreuz*).

32. The Welfenschatz occupies a unique position in German history and culture, harkening back to the

early days of the Holy Roman Empire and conceptions of German national identity and power.

33. Conservative estimates of the present-day fair market value of the Welfenschatz (including those advanced by the SPK itself) exceed $250,000,000.

34. In or around 1929, the Consortium was formed. It consisted of the plaintiffs' ancestors and/or predecessors-in-interest, and on information and belief it received additional funding from third parties in what amounted to a loan. Only these three art dealer firms—Z.M. Hackenbroch, I. Rosenbaum and J. & S. Goldschmidt—were the signatories to the contracts of 1929 and of 1935. On information and belief, the Consortium was solely entitled to ownership rights of the collection in the time period of October 5, 1929 to June 14, 1935 when the Welfenschatz had been in their possession. This ownership was unaffected by certain lenders, banks, and individuals (*e.g.*, a business man called Hermann Netter ("Netter") from Frankfurt, Germany), who acquired no property interest in the collection.

35. By written agreement between the Consortium and the Duke of Brunswick-Lüneburg, the Consortium acquired the Welfenschatz on October 5, 1929. A true and accurate copy of that agreement is attached hereto as Exhibit 1, followed by a certified translation.

36. When the possibility that the Consortium might successfully acquire the Welfenschatz first arose, it was to the particular annoyance of disappointed German museums and states. As the Hannover High

Provincial President Gustav Noske ("Noske"), the former Reich Minister of defense, wrote on November 26, 1929 to the Prussian Minister of Finance and the Prussian Minister for Science, Art and Education, the price for the Welfenschatz would be "a minimum amount of 20 million RM." Indeed, the famed *Kuppelreliquiar* now wrongfully in the possession of the SPK (and which is shown prominently on the museum guide sold in the United States that is referenced above) was discussed as having a value of 4 million RM *all by itself* at that time (*i.e.*, a sum consisting of the better part of the amount for which the Consortium was eventually forced to sell the *entire* Welfenschatz).

37. Concerted efforts by Germany's Reichsregierung (Reich Government), the Prussian State Government and several other entities and museum officials in June of 1930 to "save [the Welfenschatz] for Germany" failed, mainly caused by Otto Braun, the then-Prussian Prime Minister's veto. While perhaps the House of Welf could not regain the treasure, there was an interest as described by President of the Prussian Staatsrat, Oskar Mulert ("Mulert"), with anti-Semitic foreshadowing to "sell the pieces to Germany, to avoid an accusation of hucksterism abroad."

38. At the request of the National Socialist faction, the town council of Frankfurt resolved as follows on August 26, 1930 concerning the "maintenance" of the Welfenschatz:

> A provisional enactment is adopted . . . [ ] that the most valuable and oldest cultural assets

> of the German people, in particular the Welfenschatz, should not be permitted to be sold abroad, so that it can remain in the country.

39. Even a nationwide lottery was planned to collect money for the "salvation of the Welfenschatz."

40. By 1930, the official intention was to buy the Welfenschatz for the Berlin museums. This failed due to the resistance and vetoes of the then-Prussian Prime Minister Braun. Braun was particularly passionate about his plans for a democratic land reform, which earned him the enmity of the large Prussian landowners. In the final years of the Weimar Republic, Braun opted for cooperation with the conservative forces to keep the Nazis from power. He forbade the Rhenish steel helmet ("Stahlhelm"), a World War I community of ultra-conservative and National Socialist veterans, and enforced the nationwide ban of the Nazis' *Sturmabteilung* ("S.A."), the Nazi Party's paramilitary goon-squad and branch. In early March 1933, Braun fled Germany in fear for his life and went into exile in Switzerland.

41. Nevertheless, in the dying days of the Weimar Republic, the Consortium was able to bring the Welfenschatz to the United States to offer it for sale to museums. To some extent, the Consortium succeeded. By 1930-31 about half of the collection had been sold to museums and individuals in Europe and in the United States. Those 40 pieces (out of 82 overall) which were sold to the Cleveland Museum of Art and others,

however, comprised only about 20 percent of the value of the Welfenschatz acquired in 1929—and did not include the most valuable pieces such as the iconic *Kuppelreliquiar*.

42. After the dramatic events and reactions of 1930, matters settled down briefly with respect to the Welfenschatz. The Consortium, while not unaffected by the growing world economic depression, was able to safeguard the core income of its members and stay in business. None of the three companies filed for bankruptcy.

43. This period of relative calm, however, was not to last.

The Nazi Rise to Power

44. Founded in 1923, the National Socialist German Workers Party (*National Sozialistische Deutsche Arbeiterpartei*, or "NSDAP"), grew out of various nationalist movements in the wake of World War I. Originally called the DAP, (*Deutsche Arbeiterpartei*), Hitler was member No. 55. He soon took control of the movement, and his message from the start was the unmistakable intent to marginalize and eliminate European Jews.

45. Throughout the 1920s, the NSDAP struggled for relevance in the economic chaos of the fledgling Weimar Republic. A failed coup d'état in 1923 that came to be known as the "Beer Hall Putsch" was derided as amateurish, and Hitler and other Nazi leaders

were imprisoned. While incarcerated at Landsberg Prison, Hitler penned the foundational document of what would become the Nazi movement: *Mein Kampf*. The book left no doubt as to Hitler's worldview, and his views on where Jews fit into it, *i.e.*, they did not. For anyone seeking to rise within the NSDAP, or later the government that it took over, it left no secret about how to please Hitler.

46. With the onset of the Great Depression, the electoral fortunes of the NSDAP improved. Still unable to break through into a position of parliamentary control, they nonetheless achieved substantial enough minorities to be reckoned with, and made a name for themselves with threatening behavior in the legislatures they joined.

47. That threatening behavior took its worst form outside the halls of town halls, "Landtage," the German states' parliaments, and the Reichstag, however. The Nazis and their "brownshirts," the S.A., became known for politically-motivated violence and attacks on political opponents, communists, socialists, and Jews.

48. The Nazis also now found resonance in the electorate with their scapegoating of Jews. Jews had long been stereotyped in association with commerce, as part of the alleged "Global Jewish Conspiracy." The NSDAP played off this, and blamed Jews for any and all economic setbacks: the hyperinflation of the Weimar Republic, the collapse of the stock market, bank closings, and the Great Depression. In a frightening

time, the Jews of Germany felt the scorn of their neighbors as never before.

49. In the parliamentary elections of 1932, the NSDAP won a plurality of the popular vote for the first time. This gave the NSDAP the largest faction within the Reichstag, though not yet a majority. It was to be the last even arguably democratic election in Germany until after 1945.

50. On January 30, 1933, Adolf Hitler was appointed Chancellor by aging Reich President Paul von Hindenburg. What was initially perceived as a stabilizing nod to conservatism, quickly descended into an onslaught of repression. All the designs of the Nazi Party program of 1920, the failed "putsch" of 1923, and *Mein Kampf* had now assumed the authority of the state.

51. On February 27, 1933, a fire broke out in the Reichstag, the imperial parliament building that housed the legislature of the Weimar Republic.

52. This provided the Nazis with the entire pretext they needed. Cited as proof that German communists were plotting against the government, despite flimsy evidence and the likelihood that it was orchestrated by the Nazis themselves as an excuse to act, it was to become the precipitating event for Nazi Germany.

53. With the "Decree of the Reich President for the Protection of People and State" of 28 February 1933, better known as the Reichstag Decree, Hitler

was given far-reaching, violent means of power. Articles 114, 115, 117, 118, 123, 124, and 153 of the German Constitution, which affected the fundamental rights of citizens, were overridden. Henceforth, the restriction of personal freedom, freedom of expression and of personal property were expressly sanctioned by the state. Infringements of the Regulation were punished with confiscation, prison, penitentiary, and death.

54. With free exercise curtailed and violent enforcers unleashed on the streets, victory in the election of March 5, 1933 was ensured. The Nazis emerged with a majority of the seats in the Reichstag, and carte blanche was delivered to Hitler and his anti-Semitic program.

55. Hitler and his regime wasted no time whatsoever. The Enabling Act of 1933 (*Gesetz zur Behebung der Not von Volk und Reich*, or Law for the Remedy of the Emergency of the People and the Reich) amended the Weimar Constitution further, giving the Chancellor—*i.e.*, Hitler—the power to enact laws without the legislature.

56. Other laws followed in this vein: the Restoration of the Civil Service Law of July 4, 1933, the destruction of public unions and democratic trade associations in April and May, 1933, the institutionalization of the one-party state and expulsion of non-National Socialists (July 14, 1933), and the repeal of the fundamental constitutional rights of the Weimar Republic all followed.

57. These laws and regulations, while draconian, barely approach the repression that was unleashed on Germany's Jews. Through the collective humiliation, deprivation of rights, robbery, and murder of the Jews as a population, they were officially no longer considered German.

58. Boycotts of Jewish businesses spread in March and April 1933, just weeks after Hitler's ascension, with the encouragement of the state itself.

59. By the spring 1933, the concentration camp at Dachau had opened, and the murder of Jews detained there went unprosecuted. This may seem unsurprising with the benefit of hindsight, but Germany had descended in a matter of weeks to a place where Jews could be plucked off the streets, imprisoned, and murdered just yards away from their neighbors, all without consequence. Closer to the Consortium, the Osthofen concentration camp outside of Frankfurt opened in May, 1933.

60. It was not merely that such violence could happen with impunity, but also that it was now officially encouraged.

61. The boycott of Jewish-owned businesses is hard to imagine now. Judges, lawyers, doctors, retailers, art dealers—the bedrock of the German middle class—were targeted and driven out of their ability to make a living.

62. Propaganda was soon in full swing. The *Völkischer Beobachter* was the notorious official Nazi Party

paper. In an edition dated March 31, 1933, Julius Streicher (who published his own militant and racist newspaper *Der Stürmer*) called on the populace to boycott Jews as "profiteers, war slide, convicts, deserters and Marxist traitors." He concluded:

> All Jews will have to fight so long, until victory is ours! Nazis! Defeat the enemy of the world! And if the world would be full of the devil, we must succeed yet!

63. S.A. men, the by-now-ubiquitous brownshirt thugs, fanned out to express "public opinion," as the police and ordinary citizens looked on. Jewish shops were smashed, stores and apartments were looted, and Jewish lawyers were beaten on their way to court.

64. The latent danger for Jews to lose their lives and their property was not dependent on the new laws noted above, though they hastened the threat. More laws restricted the ability of Jews to transfer assets—punishable by death—as Jews were tortured in Gestapo, S.A. and S.S. cellars or simply beaten to death in broad daylight.

65. For example, on April 1, 1933, furrier Hirsch Ber Gottfried was beaten through the streets of Leipzig, and had a sign hung around his neck that read "I am a dirty Jew."

Prussia and the Nazis Train Their Sights on the Welfenschatz

66. No Jews could remain unaffected by the foregoing, and the members of the Consortium were no different. The members of the Consortium were soon completely cut out of economic life in Germany, and on information and belief, were themselves threatened with violence.

67. On information and belief, the *Geheime Staatspolizei*—the Gestapo—opened files on the members of the Consortium because of their ownership of the Welfenschatz and their prominence and success.

68. Not surprisingly, Prussian interest in the Welfenschatz was soon revived now that the Consortium was so vulnerable.

69. Former District and Local Leader of the *Kamfbund für deutsche Kultur*—the League of Struggle for German Culture—and new Mayor of Frankfurt Friedrich Krebs ("Krebs") quickly wrote to Hitler himself (emphasis added):

> Upon coming to power, National Socialism in Frankfurt a.M. also found extraordinarily unclear relationships in the area of art. Since then, the coarsest grievances have been resolved and in the course of reconstructing the artistic life of the old imperial city, I have come to the question of how one of the greatest artistic and cultural properties of the German people, the [Welfenschatz], which was last exhibited in Frankfurt a.M. in 1930 and

then transported to America, can be won back for the German people. . . .

[ ]

The Gospels of Henry the Lion must be regarded as a key piece of the Guelph Treasure that is located in Gmunden. This work of German book illumination is the greatest of all time and is not included (in the inventory) in the Guelph Treasure and has also therefore not been moved to America; however, it belongs integrally and, indeed, as a key piece.

The securing of the Gospel of Henry the Lion would be the most important act in a systematic cultivation of historical artifacts for Germany and would attract even more attention because the work is hardly known in wide sections of the population and has never been shown to the public.

Under your leadership, the new Germany has broken with the materialism of the past. It considers the honor of the German people as its most valuable asset. In order to reclaim this honor on an artistic level, I believe the recovery and the ultimate acquisition of any irreplaceable treasures from German's middle ages, such as they are organically combined in the [Welfenschatz], would be a decisive step. According to expert judgment, the purchase is possible **at around 1/3 of its earlier value**. It therefore relates to an amount that will be proportionally easy to raise. I therefore request that you, as Führer of the German

> people, create the legal and financial preconditions for the return of the [Welfenschatz].

70. A true and accurate copy of this letter is attached hereto as Exhibit 2, followed by a certified translation.

71. Ostensibly Krebs sought the acquisition of the Gospels of Henry the Lion, but his real intention was to save the honor of the German people, to snatch the Welfenschatz from the Jewish merchants, and bring it "home to the Reich," and asks *Hitler himself* to lay the groundwork for obtaining the Welfenschatz at only 1/3 of its value.

72. To place Krebs in context among Nazi zealots, he distinguished himself as mayor by firing all Jewish civil service employees ten days *before* the Law for the Restoration of the Civil Service was enacted.

73. Standing behind all of this was Goering himself, Hitler's highly decorated deputy—Prime Minister of Prussia at that time—aided by the desire and expediency by his underlings to demonstrate their anti-Semitic credentials to him and to Hitler.

74. Goering was a notorious racist and anti-Semite who, in view of the massive destruction of infrastructure and buildings, mostly synagogues, caused by the Nazi-mob on occasion of the Reich's Pogrom Night, or "Night of Broken Glass" ("Kristallnacht") in November 1938, is quoted saying that he would have "preferred if you would have slain two hundred Jews rather than destroying such values. . . ."

75. Goering's appetites were as prodigious as they were legendary, particularly with respect to art. He cultivated for himself an image of culture and refinement that was belied by his rapacious greed for plundered art. Throughout his period of influence in the Third Reich, Goering targeted art that he wanted, but seldom if ever did he simply seize property. Instead, he routinely went through the bizarre pretense of "negotiations" with and "purchase" from counterparties with little or no ability to push back without risking their property or their lives.

76. Adolf Feulner ("Feulner") had a career beginning in 1930 as director of the Museum of Decorative Arts and History Museum in Frankfurt, and from 1938 to his death as head of the *Kunstgewerbe* (arts and crafts collection) of Cologne.

77. In a letter dated November 1, 1933, Feulner wrote to the President of the German Association for the Preservation and Promotion of Research (*Deutsche Gemeinschaft zur Erhaltung und Förderung der Forschung*, or the "DFG"), Friedrich Schmidt-Ott ("Schmidt-Ott") about the Welfenschatz. This letter makes clear that it was Feulner who approached the Consortium, and not the other way around, and at the instigation of Krebs or at the very least in consultation with him. Feulner wrote: "After consultation with Mr. Hackenbroch / . . . / the owners are very willing . . . to enter into negotiations with the Reich."

78. Although the Welfenschatz was physically stored in Amsterdam, the Netherlands by this time,

there is no question that the peril faced by the Consortium as Jews, still living in Germany and vulnerable to Nazi attacks at any time, placed it well within the Nazis' grasp. Any resistance posed grave risks to the Consortium and their families.

79. On January 1, 1934 the museum directors Dr. Otto Kümmel ("Kümmel," of the State Museums), Dr. Robert Schmidt ("Schmidt" of the Schloss Museum, the predecessor of the Kunstgewerbemuseum where the Welfenschatz is today), Dr. Karl Koetschau ("Koetschau" at the Kaiser-Friedrich-Museum), and Dr. Demmler (at the German Museum), together with Dr. Hans-Werner von Oppen ("von Oppen," Speaker in the Ministry of Education and Board member of the Dresdner Bank) visited the collections stored at the bank whose possession had been taken by Prussian intervention. The Welfenschatz was discussed at this meeting, and clearly not for the first time. As the minutes of the meeting composed by a Mr. Stern of the Dresdner Bank noted:

> On previous visits the museum directors, and in particular Prof. Koetschau, had noted that it was of considerable interest to establish the ways in which to incorporate the Welfenschatz. When Prof. Koetschau returned to this issue again and Dr. von Oppen was informed about the possibilities on the matter, I told him that the Welfenschatz was with an art dealer consortium, that would be happy to liquidate their failing business, and that I would be able to commence negotiations with the appropriate person, if this were desired.

80. Von Oppen directed Stern to lead the effort "in all respects."

81. Later, in December, 1946, Schlossmuseum director Schmidt misled the Allied forces in securing himself a role at the Central Collecting Point at Wiesbaden, from which he found himself a prosperous postwar career. Despite direct firsthand knowledge of the transaction, he described the purchase price of Prussia's 1935 acquisition of the Welfenschatz as 7 million RM, plus a number of valuable works of art. While still below market, this was a complete fabrication that allowed Schmidt to shift blame to others, a regrettably recurring theme among those like Schmidt who acquiesced in this kind of illicit behavior.

82. Stern notes in the minutes menacingly that although the Welfenschatz had been purchased in 1929 for 7.5 million RM, that the Consortium might be willing to accept a lower price "to liquidate the business so as not to suffer even more loss of interest. . . . "

83. Just days before Stern had told Alfons Heilbronner, owner of the art dealer Max Heilbronner in Berlin, a Jewish debtor to Dresdner Bank and since that time the messenger between the bank and the Consortium, to "determine whether a price substantially below the price that it cost, would have appeared promising."

84. Stern then told Heilbronner that he did not want to approach the Consortium, but that if Heilbronner did he could be assured a commission.

85. Heilbronner became suspicious. He had heard that "negotiations with the Reich were in progress," but he dismissed Stern because he was concerned that if an interested buyer appeared, he could not be sure if they were acting for themselves or for a third party. In any event, it was agreed that Heilbronner would "initiate his efforts immediately."

86. It was clear from the words of the representatives of the Dresdner Bank that it intended to pursue the Welfenschatz with the German Reich to obscure Prussia's role in transacting business with Jews.

87. The SPK has publicly argued that the Consortium initiated the dialogue that ultimately resulted in the 1935 transaction. In fact, there is no evidence whatsoever to suggest that the Consortium sought to begin negotiations with the Nazi state. The only plausible interpretation of the correspondence among high-ranking Nazis is that it was they—the Prussian functionaries—who sought out the Consortium.

88. This conclusion is underscored by the Dresdner Bank's role as intermediary in the targeting of other Jewish collections. Dresdner Bank was majority-owned by the German state at the time of the Nazi ascension to power. Between 1933 and 1937, when it was once again privatized, it played a similar role in other cases. On August 15, 1935, the Dresdner Bank executed an agreement to sell the Berlin museums more than 1,000 works, including works "purchased" from Jewish owners under the days of early Nazi terror. These works of art came from Jewish art collections

which had been handed over to Dresdner Bank as collateral at some point and which were sold by Dresdner Bank, as the bank's property, in mid-1935 to the Prussian Nazi-State in order to enrich the Berlin state's museums' collections. The bank's role in the Welfenschatz transaction is consistent with this complicity.

89. The Dresdner Bank's role as an agent and/or co-conspirator of the Nazi state is further underscored by a statement made by the law firm Bergschmidt-Toussaint-Burchard of Berlin on April 20, 1936, which represented Dresdner Bank's interests in a claim against Herbert Bier, the nephew of Zacharias M. Hackenbroch, living as a Jewish refugee in London at that time. The letter states that "/ . . . / as you may be aware, Dresdner Bank's and the German Reich's Treasury's economic issues are very much the same. The receivables we have been given order to seize from you, therefore is German tax payers' money."

90. As detailed in an investigative report in *Der Spiegel*, the leading German weekly news magazine, a study commissioned by the Dresdner Bank took an unprecedented look at the role of a financial institution in Nazi Germany:

> "Dresdner Bank in the Third Reich" paints a stark picture of how the firm actively courted Nazi favor in order to make money and rapidly expand its business.
>
> The study also shows the bank took part early on in the Third Reich's policy of confiscating Jewish property and wealth. "It's a myth that

> the bank was forced to take part in the 'Aryanizing' of Jewish wealth," [ ]
>
> But perhaps one of the most damning associations for Dresdner's past managers is its close ties to Heinrich Himmler's SS. The bank was the most important private lender for the Nazi organization and played a key role for its operations in occupied Europe, essentially acting as the bank of the SS in Poland.

91. The Dresdner Bank's approach to the Consortium is completely consistent with this history, and is the only plausible inference from the documentary evidence.

92. On January 23, 1934, Stern reported to the Reichsbank directorate that Heilbronner had not succeeded with the spokesman of the Consortium. He was told that the Consortium "will not go down under 6.5 million RM, perhaps 6 million RM in extreme circumstances."

93. Heilbronner quickly traveled to Paris under pressure from the bank syndicate to tell Saemy Rosenberg that the price could not exceed 3.5 million RM.

94. Stern memorialized another meeting on May 11, 1934: Mulert had called, and wanted to know if it was going to be possible to "secure the Welfenschatz for German museums." Stern had informed Mulert that the Consortium had advised that they had an offer in hand for 7 million RM, probably from a Berlin private banker.

95. It was hardly unexpected that such an offer would have come in, nor that the Consortium would have wanted to wait out for bidders to compete against each other. Anyone listening to Hitler's speeches and official propaganda about art knew how Nazi art tastes ran: they detested modern art that they deemed "degenerate," and they exalted traditional, historical German art and motifs. The Welfenschatz was, literally, the highest example of what the Nazis sought. It combined both impeccable "German" credentials, but was also of unquestioned quality apart from the state sponsored works being churned out by the likes of Josef Thorak and Arno Breker.

96. But the Consortium did not have time to wait for the fair market value of the Welfenschatz. Legion examples of Jewish collectors and professionals exist who waited too long and lost everything.

97. Koetschau then asked Stern when the negotiations over the Welfenschatz would begin. Stern reported that he expected a firm offer from the Consortium, and that the price of 3.5 million RM being pursued would be a "very low" price constituting 15% of the Welfenschatz's value.

98. To put it in context, if 3.5 million RM were 15% of the value of the Welfenschatz, then the Welfenschatz's full value would have been ***23.33 million RM***, or nearly six times what the Consortium was paid.

99. A month later, Stern advised the director of the Schloss Museum that negotiations had stalled

because the Consortium continued to insist on a price over 7 million RM.

100. Starting in the summer of 1934, two people in particular took up the mantle of "saving" the Welfenschatz for Germany: Paul Körner ("Körner") and Wilhelm Stuckart ("Stuckart"). It was this effort that led to the eventual sale under duress of for dramatically below market value.

101. The Consortium could scarcely have expected fair treatment from them.

102. Körner already had a successful Nazi career behind him by 1934. Since 1926 he had been adjutant for Goering. Körner was an NSDAP Party member starting in 1931 (long before even a cynic could argue it was advantageous or necessary for status in Nazi-run Germany), as well as the *Schutzstaffel* (the "S.S.") —an organization later declared by the International Military Tribunal at Nuremberg to be a criminal enterprise, and about which its elite members cannot ever have had any illusions. He rose to an S.S. Group Leader (*Gruppenführer*)—an "achievement" that speaks for itself—and was appointed as personal assistant to Goering in the Prussian Ministry of the Interior.

103. After Goering became Prussian Prime Minister in April 1933, Körner was appointed Secretary of the Prussian State Ministry. On the occasion of the opening of the Prussian State Council (Staatsrat) described above, Körner wrote a foreword in the *Völkischer Beobachter*, in which he took aim at "all liberal and democratic sentiments," and described the task of

the new Staatsrat as, "to be National Socialist in its operation."

104. Goering transferred authority to Körner on April 10, 1933 over the "Research Office," the notorious institution that took over all telephone, telegram, radio, and mail monitoring in the Third Reich.

105. Goering also approved Körner for the post of Secretary of State in the Four-Year Plan. In this role, Körner was to be instrumental in helping to make the German economy "ready for war." Finally, and most tellingly, Körner later attended the Wannsee Conference in suburban Berlin in 1941, at which Reinhard Heydrich, Adolf Eichmann, and other high ranking war criminals decided upon the implementation of the "final solution of the Jewish question"—the plan to exterminate the entire Jewish population of Europe.

106. Stuckart first came into contact with the Nazi Party in 1922 while a law student, and enrolled in the Party at a time when it was barely on the fringe of mainstream German politics. By 1926, he was the legal adviser of the NSDAP in Wiesbaden. Starting in 1930, he was also a member of the *Kampfbund fur Deutsche Kultur*. He applied to the civil service in 1930, but was dismissed in 1932 because of his political (*i.e.*, Nazi) convictions. Stuckart also joined the S.A. in 1932 and ascended to be the legal secretary to the S.S. and S.A. in Pomerania.

107. On May 15, 1933 Stuckart was appointed as Acting Assistant Secretary of State in the Prussian Ministry of Science, Culture and Public Education.

Just a few weeks later, he was appointed Secretary of the Ministry of Science and entrusted with the representation of Minister Rust.

108. Rust had been a member of the NSDAP since 1922. He was a "Gauleiter" (an honorific given to regional leaders within the party) after 1928 of the nationalist/anti-Semitic National Socialist Society for German Culture. After the seizure of power, he founded in 1935 the racial ideology Reich Institute for the History of the New Germany. Rust committed suicide on the day of German surrender on May 8, 1945.

109. Stuckart's area of professional responsibility by then included primarily "Jewish Affairs," and he was to become the architect of the development of the anti-Jewish law. Notably, he was instrumental in the drafting of the "Nuremberg Laws" that codified the exclusion of Jews from all aspects of society. In 1936 he became Chairman of the Reich Committee for the Protection of German Blood.

110. This, then, was the first of the characters with which the Consortium was confronted in seeking to recoup the fair market value of their property.

111. Still in his capacity as Deputy Minister of the Ministry of Science, Stuckart answered on July 14, 1934 a June 26, 1934 letter from Körner. Körner had submitted to Stuckart a draft of a letter to be sent to Hitler, to which Stuckart offered his opinion as follows:

> I note that in the opinion of the Prussian Minister of Finance, an acquisition by the

> Prussian State would be within the range of possibilities, providing that the President of the Reichsbank (in parallel the negotiations that were recently held between him and myself in relation to the question of purchasing the art collections that are situated at Dresdner Bank, about which I have notified the Prime Minister through official channels) declares himself to be in agreement that the payment would not take place in cash, but by issuing Prussian treasury bonds. Reichsbank President Schacht held out the prospect of the same kind of financing for the acquisition of the Guelph Treasure by the Prussian State. This means that Prussia does not need to raise any funds now, but solely takes on a less onerous indebtedness. In this way, Prussia would be put in a position where it was able to subsequently bring the historically, artistically and national-politically valuable Guelph Treasure to the Reich in addition to many other valuable cultural treasures.

112. A true and accurate copy of this letter is attached as Exhibit 3 hereto, followed by a certified translation.

113. The cast of notorious National Socialists identified in the paragraphs above and arrayed against the Consortium is sobering. First, of course, the draft letter is intended for Hitler himself. Currying favor with the Führer through acquiring the Welfenschatz was the overriding goal. Second, Stuckart had already vetted the plan with the Prime Minster of Prussia —*i.e.*, Goering. Lastly, the financing that had been

considered, approved, and planned, came from Schacht, the President of the Reichsbank.

114. For his part, Schacht was no lightweight in the Nazi Party; in addition to his duties as President of the Reichsbank from 1933 to 1939, he was the Reich's Economic Minister from 1934 to 1937, as Germany flouted the Versailles treaty, targeted resources in the Saarland that were supposed to remain neutral, and made every preparation to plunge Europe—and with it the whole world—into war.

115. The letter went on to describe how Stern, and a "Mr. Pilster" would soon appear as "interested parties," offering intentionally lowball offers of 3 million and 4 million RM—a scheme orchestrated by the "M.P.", *i.e.* by Prime Minister Goering, quite literally for Hitler. It went on to recommend that the city of Hannover be discouraged from entering into the negotiating picture.

116. The letter closes, "With German greetings and Heil Hitler!"

117. Stuckart thus describes the motive for the acquisition of Welfenschatz: to impress Hitler and his circle, and to do so for a less than market price. The pressure that would allow this to happen is so axiomatic as to be a basic aspect of Nazi Germany: the life and liberty of the Consortium were at stake.

118. For Stuckart himself, he is even more frank. The Welfenschatz is "obviously politically" valuable for Prussia "in its later rise in the Reich." The stage was

thus set, to take advantage of the weakened position of the Consortium by virtue of their persecuted status, to acquire the Welfenschatz for far-below-market price.

119. That process only accelerated as 1934 went on. The National Socialist regime was not content to enact legislation targeting specific policy aims. The Nazis were clear that the real goal was *Gleichschaltung*-the transformation of society itself. Art was at the center of this plan.

120. In 1933, Minister for Propaganda and Education Joseph Goebbels founded the Reich Chamber of Culture (*Reichskulturkammer*)—after first organizing the April 1, 1933 Jewish boycotts. The *Reichskulturkammer* assumed total control over cultural trade, and membership was required to conduct business. Needless to say, Jews were excluded, effectively ending the means of work for any Jewish art dealer in one stroke. Major dealers' collections were liquidated because they could not legally be sold.

121. Ideologue and "Reichsleiter" Alfred Rosenberg soon got involved as well. Alfred Rosenberg played many roles. He was the editor of the *Völkischer Beobachter*, and he was also the author of the polemical screed *The Myth of the 20th Century* (*Der Mythos des 20. Jahrhunderts*)—second only to Hitler's *Mein Kampf* in its influence on Nazi racist ideology. Later, he gave his name and direction to the notorious *Einsatzstab Reichsleiter Rosenberg* (ERR) that coordinated the systematic looting of occupied countries,

particularly the collections of French Jews (those Jews, of course, were frequently then murdered).

122. Not surprisingly, Alfred Rosenberg was tried as a war criminal at Nuremberg after the war, convicted, and hanged.

123. Alfred Rosenberg's *Kampfbund für Deutsche Kultur* disrupted auctions at Jewish establishments and drove some to ruin.

124. In an added and ironic tragedy, Jewish art dealers also lost their Jewish customers, whose economic means were being destroyed systematically and comprehensively; there was no money left to buy art.

125. The impact of the Jewish exodus from German economic and cultural life by this time was made clear in a Municipal Memorandum Concerning the Departure from Culture Associations by Jewish Members," dated February 16, 1934. Rental revenue from Jewish tenants plummeted; the Municipal Theatre in Frankfurt, for example, saw its revenue fall by 100,000 RM; the Museum Society lost 40% of its revenue, the Frankfurt Art Association lost 270 Jewish and 50 non-Jewish members, nearly half of all members together; and the Staedelsches Kunstinstitut likewise saw its membership drop from 120 to 70. Investment in art fell too.

126. To sum it all up, on December 1933, the Frankfurt city treasurer wrote to Krebs with regard to the current climate:

> In the period from 1 March to 31 October 1932, 372 Jewish firms were closed. In the same period of the year 1933, 536 Jewish firms were closed. It is not only the increasing the number closures from 1932 to 1933 that shows the severe economic damage that the city has seen. Rather, it has to be noted that while the earlier closures were also followed by corresponding new applications, there can of course be no question of any significant new registrations in 1933.

127. The local museums, who were mainstay customers of the dealers in the Consortium, fell away too but not for reasons of economic difficulty. Rather, they were subject to new stringent nationalist regulations, characterized by the infamous signs *Kauft nicht beim Juden!*—"Don't buy from Jews!"

128. Because of the anti-Semitic climate, Isaak Rosenbaum and his nephew Saemy Rosenberg, the two co-owners of I. Rosenbaum, gave up, when Saemy Rosenberg had received a warning from a trusted friend and World War I comrade, that he should better "go on a long vacation abroad." They left Germany, and emigrated to Holland. Both were liable for the payment of flight tax in the amount of 25 percent of their total (movable and immovable) assets. A true and accurate copy of the Gestapo memo that memorialized this extortion is attached hereto as Exhibit 4, followed by a certified translation.

129. The owners of the art dealer J. & S. Goldschmidt (also part of the Consortium) were forced by

the Reich Chamber of Culture to vacate its premises at Berlin in 1934, where it had been since 1923 in the Palais Rathenau. J.&S. Goldschmidt had no choice but to move to the back room of the antiques firm of Paul Graupe auction house, as subtenants. Naturally, sales continued to decline precipitously, and the business was de facto closed by 1936, when Julius Falk Goldschmidt and his cousin Arthur fled Germany in July and in November the same year, leaving behind all of their assets.

130. The nephew and designated successor of Z.M. Hackenbroch, Herbert Bier, later described the cataclysm that befell his uncle: "The depression of 1930 and what followed was naturally notable, but the real decline began with the boycott in 1933." And the lawyer for Hackenbroch's widow Clementine later added poignantly:

> Although, according to a letter from the President of Fine Arts, the deceased husband was allowed to exercise his profession / . . . / until 7/31/37, such an exercise of his business amounted to little or nothing in view of the economic damage caused by the general Boycott. Like a still-licensed attorney, a doctor was allowed to operate, but it was known that the Jew was boycotted and was shunned despite official permission from Christians. I was also a "Front Combatant" with an Iron Cross 1st Class, and thus allowed my activity by law. But I had nothing more to do.

131. While "Aryan" companies had suffered just as Jewish businesses had under the global economic crisis, starting in 1933 the former soon got back on its legs thanks to the Nazi regime and, relevantly, prospered from the repression of their Jewish competitors.

Dresdner Bank

132. Dresdner Bank, which became notorious as the "S.S. bank", was frequently complicit in one-sided and manipulative taking advantage of other Jewish business owners, as spotlighted in many studies, e.g. by the Office of Military Government for Germany (OMGUS)—Financial Division, by its 1946/47 summary reports on the investigation of the role of the German banks during the Nazi era (*cf.* OMGUS: Dresdner Bank Report—Report on the Investigation of the Dresdner Bank, 1946). According to these studies, Dresdner Bank executives forged especially close ties to SS leader Heinrich Himmler: "We are the bank of SS," as Dresdner Bank executive board member Emil Meyer had declared in 1941. Dresdner Bank—which until the early 1990s had claimed only a limited role in helping the Nazis—was deeply involved in the Third Reich in many ways and, after Hitler came to power in 1933, it took the lead in seizing Jewish property, set up countless subsidiaries in occupied territories and financed the arms sector. Dresdner Bank became a leading financier of the German occupation authorities in occupied Poland and Hitler's invasion of his neighbors enabled the bank to expand its operations and increase its earnings potential in a way it had never envisaged.

Dresdner Bank, like other Third Reich banks, was extensively involved in expulsions, genocide and war.

133. On February 9, 1935 Dresdner Bank Director Samuel Ritscher wrote in a file note that Prussian Finance Minister Johannes Popitz ("Popitz") had asked him to care for the matter of the Welfenschatz. It would fall to him to carry out this transaction together with the art collection of Dresdner Bank, "so the whole thing appears to be together."

134. The magnitude of this opportunity was apparent to Popitz, who saw the possibility of taking advantage of the Consortium's condition to acquire the Welfenschatz.

135. Stern described a meeting of the Director of the Schloss Museum with Director Nollstadt ("Nollstadt") of Dresdner Bank of February 12, 1935: Heilbronner remained in "continuous negotiations" with the Consortium. Nollstadt discussed the importance of conveying the impression to the Consortium that the buyer whom Dresdner Bank represented intended to gift it to the state museums, such that the Consortium would conclude there were no other potential buyers (those very museums being the most obvious candidates otherwise).

136. At the beginning of April, 1935, Otto von Falke, one of the leading and well-known German art experts and co-author to a rare catalog compiled on the Welfenschatz by 1930, viewed the remaining parts of the Welfenschatz. He reported, "that the most beautiful and historically the most outstanding works of art,

on which the fame of the Welfenschatz is based, still exist."

137. On April 6, 1935 Heilbronner reported directly to Director Ritscher that he had been "intensely preoccupied with the matter" for a year and a half. The problem according to Heilbronner, was that Rosenberg and the other members of the Consortium were confident in the rectitude of the asking price. Heilbronner resolved to convince the Consortium of the fleeting nature of the opportunity—fleeting of course because of the grave peril that the Consortium now faced in the Nazi regime.

138. By the spring of 1935, the exclusion of Jews from the German life had assumed more threatening forms, and had become nearly total. The means by which German art could be sold by Jewish dealers had effectively been eliminated.

139. It is hardly a surprise then, that after two and a half years of pronounced repression and the very real risk that they would lose the entire Welfenschatz, if not more, the Consortium sent word that it might be "willing" to relent from the fair market value of the collection and sell it for 5 million RM—already far below what all involved had acknowledged was its real value. These "deliberations" were, of necessity, coerced and under duress by virtue of the circumstances.

140. On April 10, 1935, Heilbronner spoke again with Ritscher, who told him that Dresdner Bank "in the name of its client," was authorized to submit a bid of 3.7 million RM for the Welfenschatz.

141. Then, a new issue arose that threatened the intended acquisition of the Welfenschatz, the "solution" to which only underscores the coercive context of the pending transaction.

142. In Herrenhausen bei Hannover (near the City of Hannover, capital of the German federal state Lower-Saxony), a new museum had been planned, and it intended to seek to acquire the Welfenschatz. The basic economics of the effect that this could have had on the negotiations is clear: it presented the possibility that a new, motivated bidder would enter the discussion willing to pay the fair market value, against which Prussia's lowballing would stand no chance in a real negotiation.

143. Dresdner Bank, which was acting on behalf of Prussia and which had also indemnified Heilbronner for his commissions, assured that it would take appropriate action: The "authoritative entities" were to be invited to review the plans at Herrenhausen to ensure that there was no "conflict." In other words, the Nazis made it clear to the museum in Herrenhausen to cease its interest in buying the Welfenschatz fairly.

144. Thus, in one final stroke the Nazi state and its agents stripped away the last chance that the Consortium had to recover the value of its property.

145. After two years of direct persecution, of physical peril to themselves and their family members, and, on information and belief, secure in the knowledge that any effort to escape would result in the certain

seizure outright of the Welfenschatz, the Consortium had literally only one option left.

146. Rosenberg submitted an offer valid until May 4, 1935 under the most extreme duress: a sale price of 4.35 million RM.

147. Dresdner Bank, still in its role as the "purchaser," would not drop the ruse. It claimed that its "client" (*i.e.*, the Nazi state itself) was "traveling" and could not yet respond to the offer, asking for another 16 days to respond. "However," said the bank, "we believe it should be noted that the margin between the price 3.7 million RM that you rejected, and your current demand, is so great that we fear that our client will not increase his offer."

148. Additional discussions ensued about the proportion of the sales price that would be paid in cash, and whether in local or foreign currency, and whether in Germany, or elsewhere.

149. On May 17, 1935, Rosenberg made a final offer on behalf of the Consortium. By early June, the negotiations had progressed to the point that the acquisition of the Welfenschatz was considered all but certain, such that Rust, as Reich Minister for Science, Education and Culture, wrote to the Minister of Finance:

> It is with great satisfaction that I welcome the repurchase of the Welfenschatz, in connection with the proposed acquisition of the art holdings of the Dresdner Bank. Its recovery for

Germany gives the entire action its historic value.

150. During the negotiations, Saemy Rosenberg was staying at the Hotel "Fürstenhof" at Potsdamer Platz in Berlin. At this same time, S.A., Hitler Youth, and non-party members were demonstrating against Jewish shops daily, chanting, "do not buy from Jews!"

151. The same day—Friday, June 14, 1935—when Saemy Rosenberg signed the sales contract in Berlin, apparently in great haste and pushed by his counterparts from Dresdner Bank—he sent a letter to Dresdner Bank when he returned to the hotel, stating that the contract should be regarded as legally valid, even without the other owners having signed it at this point. Furthermore, he promised to get all of the owners of the Welfenschatz to sign it properly by return.

152. On July 1, 1935, Saemy Rosenberg went to the Kaiser Friedrich Museum in Berlin to view the works of art in the collection, as the incorporation of some existing works had come into the discussion for the Welfenschatz negotiation.

153. A true and accurate copy of both the contract of June 14, 1935, and the letter of Saemy Rosenberg of June 14, 1935, are attached hereto as Exhibit 5 and Exhibit 6, respectively, followed by certified translations.

154. The surviving copy of the contract bears four signatures only: of Saemy Rosenberg, Isaak

Rosenbaum, Zacharias Max Hackenbroch and Julius Falk Goldschmidt—the sole owners of the collection.

155. The tactics of the Nazi-Prussian state and of Goering to get possession of the Welfenschatz under "favorable conditions" thus proved successful, accomplished by means of terror and threat, relying on the great imbalance of power of the contracting parties and by pursuing a scheme of grave manipulative negotiation and a cover-up.

156. In mid-July, as the "deal" was being concluded, there were riots on Berlin's Kurfürstendamm.

157. On July 18, 1935, the Welfenschatz, supervised by director Dr. Schmidt, was carefully packed in Amsterdam for delivery to the Schlossmuseum in Berlin.

158. On July 19, 1935, Dresdner Bank made the requisite payments pursuant to this document.

159. The agreed upon terms and conditions of the contract of June 14, 1935 were to the unique benefit of the buyer, the Nazi state. Moreover, the Consortium was obligated to pay a commission of 100,000 RM to Alfons Heilbronner out of their pockets (which enabled Heilbronner to pay back his debts he had with Dresdner Bank to some extent). After the deduction of that commission, the remaining purchase price of 4.15 million RM was split: 778,125 RM were paid to a "Sperrmark account," a blocked account with Dresdner Bank. To be offset against the credited money, the art dealers had to accept art objects from the Berlin

Museums instead of having access to freely dispose of that money. The received works of art eventually were sold in order to repay the Consortium's foreign loans. According to Hackenbroch, the selection of the pieces from the museums to be delivered to them, and contrary to prior mutual agreement, was not made by the art dealers, but ultimately by museums' officials. They were thus forced to accept other items in lieu of payment—not by choice—but at their risk of selling them at appropriate prices (which was of course impossible because of their persecution as Jews).

160. The balance, the amount of 3,371,875 RM, was credited to three different bank accounts of Hackenbroch in Germany.

161. The Consortium used that money to repay the investors, the money lenders from 1929 in full, the receipt of which is confirmed by German tax records. This only diminished further the diluted value for their property that the Consortium realized in this coercive transaction. Thus, the Consortium disposed of the Welfenschatz at a significant loss relative to its market value, when they had no longer had any alternative in Germany to earn a living.

162. By this time, Jews were denied not only to transfer cash abroad legally, but any other receivables of more than 50,000 RM. One of the massive obstacles to emigration was the so-called flight tax on all emigrating nationals who had assets of more than 200,000 RM. While originally intended to discourage emigration in the Great Depression, it was used by the Nazi

regime as a means simply to steal what Jews had left as they fled for their lives.

163. Hackenbroch died on August 9, 1937, officially because of cardiac insufficiency.

164. Cleveland Museum of Art director William M. Milliken ("Milliken") traveled to Germany before the war on a regular basis and had been well acquainted with the art dealers. In his autobiography, he discussed the Consortium and the Welfenschatz.

165. Milliken left no doubt that the very possession of the Welfenschatz by the Consortium, and in particular the decision to sell portions of the collection in America, subjected the Consortium to specific anti-Semitic vitriol.

166. Milliken also relates rumors he had heard about Hackenbroch being "dragged to his death through the streets of Frankfurt by a Nazi mob."

167. In either event, Hackenbroch's widow was evicted from their house—on what had then been renamed, in the bitterest of ironies, "Hermann Goering Ufer"—two months later so that the Hitler Youth could use it. The last remnants of his gallery inventory came to auction in December, and on December 30, 1937 the firm was deleted from the commercial register and simply ceased to be.

168. Clementine Hackenbroch, the widow of Zacharias, emigrated in the summer of 1938 with her daughter Irene to England. After 52,808 RM for flight tax was extorted from her, and their accounts blocked

at Deutsche Securities, and Exchange Bank, she had no other property.

169. Lucie Ruth Hackenbroch (Philipp's mother) came under surveillance of the Gestapo and was herself stripped of her citizenship in humiliating fashion: published under the swastika of the German Reichs Gazette and Prussian Gazette. Almost as an afterthought, it is noted that all those on the list who have been expelled have also had their property seized. One can well imagine what would have happened to the Hackenbroch and other families if the dealers had decided, given Goering's role, to send all the remaining items to USA to sell there?

170. Julius Falk Goldschmidt and the other members of that firm tried to continue the company in Berlin, Frankfurt and Amsterdam. He emigrated to London in summer of 1936. His cousin Arthur Goldschmidt was later arrested in Paris, imprisoned in several camps, and emigrated in 1941 to Cuba, and then in 1946 to the United States.

171. Saemy Rosenberg and Isaak Rosenbaum had emigrated by 1935 from Germany. In Amsterdam, the two founded the company Rosenbaum NV, which was "Aryanized" by a German "manager" after the occupation of the Netherlands by Hitler's army in 1940. Saemy Rosenberg's brother, Siegfried Rosenberg, ran operations in Frankfurt as best he could until 1937, when the company was liquidated and closed. After a further reduction in the Rossmarkt where it had traditionally stood, it moved to a warehouse. On July 11,

1938, this firm too—based in Frankfurt since the mid-19th century—was deleted from the commercial register.

172. Saemy Rosenberg had to pay 47,815 RM in Reich Flight Tax. Isaak Rosenbaum was expelled from Germany and paid 60,000 RM, plus 591.67 RM in interest, to the tax office Frankfurt-Ost.

173. In an indication of what would have befallen Saemy Rosenberg had he and the Consortium failed to capitulate, the coda to his Gestapo file was written on May 2, 1941. In this confidential file memo, Rosenberg, his wife, and his daughter Gabriele—Leiber's mother—are officially stripped of their citizenship and their property officially seized outright. *See* Exhibit 4. To add insult to injury, Rosenberg is identified on the latter part of the form with "Israel" included in his name, an appellation that the Nazi government compelled all Jewish men to add to their names. *Id.*

174. Isaak Rosenbaum died on October 28, 1936 in Amsterdam.

175. Overall, the firm of I. Rosenberg and/or its owners taxed in the amount of at least 219,497.57 RM, for the sole and exclusive reason that they were Jews.

176. In August 1939 Saemy Rosenberg fled with his wife and child from Amsterdam, the Netherlands, via Mexico to the United States.

The Aftermath

177. In the introduction to the new guide for the Welfenschatz by Otto Kümmel, housed at the Berlin Schlossmuseum in 1936, the matter is put bluntly: "The Welfenschatz was recovered for Germany in the summer of 1935 by the Prussian state government." The guide thanks Popitz, Rust, and Goering for their particular efforts in "rescuing" the Welfenschatz. The Consortium goes unmentioned.

178. Propaganda films were commissioned to celebrate the acquisition.

179. On October 31, 1935, the *Baltimore Sun* reported that the Welfenschatz was to be given as a "surprise gift" for Hitler (emphasis added):

> The bulk of the so-called Guelph Treasure, ***which was purchased by the Prussian Government for $2,500,000***, will be presented to Adolf Hitler as a "surprise gift," it was disclosed here tonight.
>
> The treasure includes an important collection of church vessels and sacred relics, richly studded with precious stones. Long owned by the Dukes of Brunswick, the treasure was purchased by a consortium of art dealers and sold to the Prussian government. Gen. Hermann Wilhelm Goering, Premier of Prussia, will preside at the ceremony at which the gift to Hitler will be made.

180. A true and accurate copy of this article is attached hereto as Exhibit 7. At the exchange rate of

the day, the reported purchase price of $2,500,000, apparently being revealed to journalists at that time by Nazi propaganda, would have been worth approximately 6-7 million RM—far more than what the Consortium actually was paid (before being further extorted for those proceeds).

181. During the Second World War, the Welfenschatz was housed in the Berlin museums, and later shipped out of the city to be saved from destruction and robbery as the war turned against Germany. After the war, it was seized by U.S. troops, then handed over in trust to the State of Hesse.

182. The end of the war brought important changes for Prussian institutions like the Berlin museums. Prussia had been long blamed for Germany's militarism in connection with two world wars.

183. After the war, the Allies had seen enough. By joint act in 1945, the *Freistaat Preussen* was officially dissolved.

184. The SPK was created for the purpose, *inter alia*, of succeeding to all of Prussia's rights in cultural property—including Prussia's wrongfully acquired possession of the Welfenschatz.

185. It is noteworthy that even the previous owner of the Welfenschatz up to 1929, the Duke of Brunswick-Lüneburg, later on, in the 1960s, claimed that the SPK, because of the tainted sale of 1935, was not to be legally entitled to the collection, but the art dealers were.

The Sale of the Welfenschatz Under Duress in 1935 was a Taking of Property in Violation of International Law

186. Since World War II, a presumption of international law has been that any sale of property by a Jew in Nazi Germany after January 30, 1933, or in any country occupied by Nazi Germany carries a presumption of duress and thus entitled to restitution.

187. This is for the basic reason, as demonstrated by the foregoing, that no Jewish citizen or resident of Germany could possibly have entered into an arms'-length transaction with the Nazi state itself.

188. In addition, the Consortium faced specific threats of violence and, on information and belief, surveillance and intimidation by the Gestapo.

189. Altogether, the economic and physical threats faced by the members of the Consortium made the 1935 sale a transaction under duress, and thus void. Viewed conversely, the 1935 transaction would be valid only if Jews in 1935, in Germany, under economic and physical peril, were free to make an arms'-length bargain with the Nazi state itself. Only to state the premise is to reveal its absurdity, and the invalidity of the 1935 transaction.

190. According to international principles of law, German law—German Civil Code ("BGB") included—the tainted and voidable acquisition of the Welfenschatz by the Nazi Prussian State in 1935 did not convey good title to Germany and SPK.

191. A bona fide acquisition of unlawfully expropriated or otherwise lost cultural goods according to § 935 BGB is prohibited within the Common law legal system—according to the *nemo dat quod non habet* principle as well as with the codified German Civil Law, according to § 935 BGB.

192. If the res in question has been stolen or lost, then bona fide acquisition according to § 932 BGB et seq. is not available (§ 935 BGB). The idea behind this limitation is that the owner has not parted with his direct possession deliberately, so that a third person shall not have the benefit of the appearance of entitlement through possession under such circumstances.

193. Any sale by the victims of the Nazi regime after January 30, 1933 that were under duress are void, with effect *ex tunc* within the meaning of § 138 BGB. This is because, *inter alia*, the transaction would not have been conducted absent the coercive rule of National Socialism. Any acquisition of such cultural objects cannot be considered a bona fide purchase in accordance with § 935 BGB.

194. Such objects whose sale is to be regarded as void under § 138 BGB, fall under the category of § 935 para. 1 BGB and apply as "lost" under German law.

195. As a result, any claimant, whose claim meets the aforementioned requirements, generally speaking, has a claim for restitution, according to § 985 BGB.

The Sham Process by the Limbach Commission, and Germany's Refusal to Honor its International Commitments to Victims of Nazi Looting Constitutes a Second Taking in Violation of International Law

196. In 1998, the United States Department of State organized and hosted the Washington Conference on Holocaust Era-Assets (the "Washington Conference").

197. The Washington Conference resulted in what have become known as the Washington Conference Principles on Nazi-Confiscated Art. Germany was a key participant, along with Austria, France, the United States, and dozens of other nations. The Washington Principles state:

> In developing a consensus on non-binding principles to assist in resolving issues relating to Nazi-confiscated art, the Conference recognizes that among participating nations there are differing legal systems and that countries act within the context of their own laws.
>
> 1) Art that had been confiscated by the Nazis and not subsequently restituted should be identified.
>
> 2) Relevant records and archives should be open and accessible to researchers, in accordance with the guidelines of the International Council on Archives.
>
> 3) Resources and personnel should be made available to facilitate the identification of all

art that had been confiscated by the Nazis and not subsequently restituted.

4) In establishing that a work of art had been confiscated by the Nazis and not subsequently restituted, consideration should be given to unavoidable gaps or ambiguities in the provenance in light of the passage of time and the circumstances of the Holocaust era.

5) Every effort should be made to publicize art that is found to have been confiscated by the Nazis and not subsequently restituted in order to locate its pre-War owners or their heirs.

6) Efforts should be made to establish a central registry of such information.

7) Pre-War owners and their heirs should be encouraged to come forward and make known their claims to art that was confiscated by the Nazis and not subsequently restituted.

8) If the pre-War owners of art that is found to have been confiscated by the Nazis and not subsequently restituted, or their heirs, can be identified, steps should be taken expeditiously to achieve a just and fair solution, recognizing this may vary according to the facts and circumstances surrounding a specific case.

9) If the pre-War owners of art that is found to have been confiscated by the Nazis, or their heirs, can not be identified, steps should be taken expeditiously to achieve a just and fair solution.

> 10) Commissions or other bodies established to identify art that was confiscated by the Nazis and to assist in addressing ownership issues should have a balanced membership.
>
> 11) Nations are encouraged to develop national processes to implement these principles, particularly as they relate to alternative dispute resolution mechanisms for resolving ownership issues.

198. The restitution encouraged by the Washington Principles is, and has been for more than 15 years, the foreign policy of the United States. The United States Supreme Court, as well as the Courts of Appeal of the United States, have recognized that proceedings in furtherance of that goal such as this one are entirely consistent with that policy.

199. In addition, Germany is a signatory to the Washington Principles. On December 9, 1999, the Federal Republic itself, the 16 *Länder*, and the association of local authorities issued a declaration of adherence to the Washington Principles, entitled the "*Erklärung der Bundesregierung, der Länder und der kommunalen Spitzenverbände zur Auffindung und zur Rückgabe NS-verfolgungsbedingt entzogenen Kulturgutes, insbesondere aus jüdischem Besitz" vom 9. Dezember 1999* (the "Collective Declaration").

200. The Collective Declaration commits to the restitution of Nazi-looted artworks, notwithstanding any other wartime claims compensation or restitution by Germany or the Allies and, consistent with postwar

Allied Military Government law, without distinguishing according to whether or not Nazi-looted assets had been robbed, stolen, confiscated, or had been sold under duress or by pseudo-legal transaction.

201. In 2009, the Czech Republic hosted a follow-up to the Washington Conference (the "Prague Conference"). Representatives of some 49 countries, most of which were affected by Nazi crimes during World War II, and nearly two dozen NGOs were invited to attend. The Conference focused on immovable (real) property, Nazi-looted art, Holocaust education and remembrance, archival access, and the recovery of Judaica. In addition, there was a session on the social welfare needs of survivors of Nazi persecution, an issue of great importance to the United States.

202. The Prague Conference resulted in the Terezin Declaration, which states, with respect to Nazi-stolen art:

> Recognizing that art and cultural property of victims of the Holocaust (Shoah) and other victims of Nazi persecution was confiscated, sequestered and spoliated, by the Nazis, the Fascists and their collaborators through various means including theft, coercion and confiscation, and on grounds of relinquishment as well as forced sales and sales under duress, during the Holocaust era between 1933-45 and as an immediate consequence, and
>
> Recalling the Washington Conference Principles on Nazi-Confiscated Art as endorsed at the Washington Conference of 1998, which

enumerated a set of voluntary commitments for governments that were based upon the moral principle that art and cultural property confiscated by the Nazis from Holocaust (Shoah) victims should be returned to them or their heirs, in a manner consistent with national laws and regulations as well as international obligations, in order to achieve just and fair solutions,

1) We reaffirm our support of the Washington Conference Principles on Nazi-Confiscated Art and we encourage all parties including public and private institutions and individuals to apply them as well,

2) In particular, recognizing that restitution cannot be accomplished without knowledge of potentially looted art and cultural property, we stress the importance for all stakeholders to continue and support intensified systematic provenance research, with due regard to legislation, in both public and private archives, and where relevant to make the results of this research, including ongoing updates, available via the internet, with due regard to privacy rules and regulations. Where it has not already been done, we also recommend the establishment of mechanisms to assist claimants and others in their efforts,

3) Keeping in mind the Washington Conference Principles on Nazi-Confiscated Art, and considering the experience acquired since the Washington Conference, we urge all stakeholders to ensure that their legal systems or

> alternative processes, while taking into account the different legal traditions, facilitate just and fair solutions with regard to Nazi-confiscated and looted art, and to make certain that claims to recover such art are resolved expeditiously and based on the facts and merits of the claims and all the relevant documents submitted by all parties. Governments should consider all relevant issues when applying various legal provisions that may impede the restitution of art and cultural property, in order to achieve just and fair solutions, as well as alternative dispute resolution, where appropriate under law.

203. Pursuant to the Washington Principles, the Terezin Declaration, United States law, German law, and international law, the 1935 sale of the Welfenschatz was not an arms'-length transaction and must be considered a transfer of property under duress, a transfer that could not have passed, and that did not pass legitimate title to the SPK.

204. Pursuant to the Washington Principles, the Terezin Declaration, United States law, German law, and international law, Germany has committed to address victims of art looting in a fair and equitable manner.

205. Germany itself has acknowledged these principles—but only when it suits. In 2003, Germany created the "German Advisory Commission for the Return of Cultural Property Seized as a Result of Nazi Persecution, Especially Jewish Property," (*Die*

Beratende Kommission für die Rückgabe NS-verfolgungsbedingt entzogener Kulturgüter, insbesondere aus jüdischem Besitz) better known as the "Limbach Commission" for its presiding member, former German Supreme Constitutional Court judge Jutta Limbach ("Limbach" or the "Advisory Commission"). The Advisory Commission is a non-binding mediation that issues recommendations to German state museums, but its decisions have no preclusive effect.

206. In one of its first decisions, Limbach considered a claim for restitution from the collection of Julius and Clara Freund, German Jews who were persecuted as such. After Julius died in his British exile in 1941, Clara sold their collection in desperation in Switzerland. Both the owner and the artwork were outside of Nazi Germany (United Kingdom and Switzerland), a far more secure place than Amsterdam in 1935, and they were paid a near-market price. Yet the larger picture was clear, and the Limbach Commission recommended restitution for a collection that was clearly sold under duress.

207. Austria also has a commission for the restitution of Nazi-looted art, and is bound by the same principles. By way of example, Austria restituted 177 botanical drawings and prints to the heirs of Dr. Ernst Moritz Kronfeld in 2014. Even though the commission could not determine with certainty how the prints had passed from Kronfeld to Baldur von Schirach, another high-level Nazi and Gauleiter of Vienna, the point was that in such a case it does not really matter:

> These questions can be left open, because the sale by either Dr. Kronfeld or his widow would have been sales by persons in a persecuted group, and would also be void as an appropriation. . . .

208. Germany has a unique historical responsibility to victims of the Holocaust, which it has gone to great lengths to accept in other contexts.

209. The attitude towards looted artworks in German museums remains, regrettably, an exception to Germany's otherwise laudable approach to confronting history.

210. Despite the creation of the Advisory Commission, despite the Collective Declaration and other measures ostensibly pursuant to the Washington Principles, Germany today still has no coherent policy towards victims of Nazi-looted art.

211. The World Jewish Congress and other victims' representatives, groups and nongovernmental organizations ("NGOs"), share this view and have repeatedly expressed their concern about it.

212. At best, the Advisory Commission serves as a non-binding mediation process. German museums are not obliged to accept its recommendations, and the Advisory Commission itself is not actually independent. It is not an arbitration, and it does not adjudicate rights in property.

213. At worst, Germany portrays the Advisory Commission as a *solution* to this inadequacy, to give

cover to the idea that Germany is in compliance with the Washington Principles.

214. The international scandal of the Cornelius Gurlitt ("Gurlitt") affair beginning in 2013 has given the lie to this notion. Gurlitt's father Hildebrand was an art dealer authorized in the Nazi state to buy and sell so called "degenerate art," which was considered contraband in the hands of anyone else.

215. In 2013 it was revealed that Germany had seized approximately 1,280 works of art from Cornelius Gurlitt as part of a tax investigation on suspicion that it was looted.

216. Since that time (the revelation itself by a newspaper was nearly two years after the artwork was found and held in secret), Germany has failed to adopt any new policies or laws. The State of Bavaria reached a private agreement with Cornelius Gurlitt shortly before he died in May, 2014, an agreement whose terms have still never been revealed.

217. That agreement appointed a Task Force to examine the Gurlitt collection, but Germany has not even followed the public recommendations of that Task Force. Instead, it has continued to resist restitution even of artworks that the Task Force recommended be restituted. On information and belief, the Task Force has made only five recommendations public, and Germany has restituted only two of those five works to their rightful owners. On information and belief, the Task Force ceased to exist on December 31, 2015.

218. A November, 2014 agreement with the named heir of Gurlitt, the Kunstmuseum Bern in Switzerland, has provided the public with some information, but the process remains opaque notwithstanding the self-congratulatory publicity that surrounded it.

219. Worse, the chairwoman of the Advisory Commission herself took the occasion to argue that *German museums* are the victims in the whole affair. This episode is telling on the perspective of German authorities to looted art: Jewish victims can wait, but German museums should be made whole.

220. In the absence of meaningful recourse, but in an interest to reach agreement on the Welfenschatz, the plaintiffs submitted their claim (on behalf of themselves and as empowered by, *inter alia*, the assignments attached hereto as Exhibit 8) to the Advisory Commission and presented conclusive evidence of the foregoing aspects of early Nazi terror and duress.

221. Despite these internationally accepted principles and precedents (among many others), the Advisory Commission failed to recommend the restitution of the Welfenschatz.

222. In what was, on information and belief, politically-motivated decision—ironically a desire to "save the Welfenschatz" that mirrors the one that animated its plunder 70 years ago—the Advisory Commission turned a blind eye to the desperate circumstances of the Consortium, and to the active manipulation and interference by the highest levels of the Prussian-Nazi state.

223. Most importantly, the Advisory Commission accepted the persecution of the Consortium as fact, but ignored the governing presumption of law—that as Jews, any sale was under duress. The SPK and its attorneys concede this presumption. The SPK presented *no evidence to the contrary* to rebut the internationally-recognized presumption of duress. By definition, the Advisory Commission should have recommended restitution without any further deliberation.

224. Instead, the Advisory Commission endeavored to re-write history with no mandate to do so. The Advisory Commission acknowledged that the art dealers were persecutees, and as such, were subject to a hostile market environment that pervaded the Reich at that time. More particularly, the Advisory Commission heard from five experts who established the context surrounding the sale at issue by showing (i) the actual market value of the collection in 1935; 11.6 Million RM; (ii) the law applicable to the sale; (iii) the historical background which supports the claim that the sale in issue was coercive and made under duress—and certainly cannot be characterized as one governed by free will and free choice in an open market; and (iv) the art dealers were the sole owners of the collection.

225. Neither the qualifications nor credibility of these experts were challenged. As such, the SPK did not carry its burden of showing why these experts should not be accepted nor rebuts their conclusions.

226. The experts in the Welfenschatz case have devoted their academic careers to studying and understanding this period and have gained an insight that is unchallenged.

227. Nonetheless, the Advisory Commission did not incorporate the uncontested findings of these experts into the recommendation, issued on March 20, 2014. This challenges the important role and assistance they contributed to the process, a role that should be encouraged. Ignoring the experts entirely in an otherwise detailed opinion undermines the credibility of the report by the Advisory Commission. It also leaves future claimants to wonder how claims are to be supported so that the Advisory Commission can reach reasoned and non-arbitrary results.

228. It also is telling that, having had ample time to gather its own evidence to rebut this expert testimony, the SPK before the Advisory Commission neither challenged these experts nor offered their own expert testimony. Put another way, *the SPK could not produce anyone who could testify to the fairness of this transaction*. Indeed, to the contrary, the SPK accepted the qualifications and testimony of the plaintiffs' experts.

229. Moreover, the defendants are likely the custodians of additional relevant documents, but failed to produce them in the course of the Advisory Commission's work. These documents likely include further correspondence among Nazi functionaries, Gestapo

files, and photographic evidence. These have been concealed from the plaintiffs.

230. Under these circumstances, this testimony must be given some weight which must form part of its decision if that decision is to be seen as reasoned and consistent with established principles of law, *e.g.*, § 286 Abs. 1 ZPO (German Civil Code of Procedure).

231. The recommendation against restitution of the Welfenschatz was also inconsistent with other prior decisions of the Advisory Commission.

232. As referenced above, in the Freund case the Advisory Commission held that victims of Nazi persecution, financially strained, who had long since fled Nazi Germany with their art collection and sold it in Switzerland, should nevertheless recover their paintings, even though both the paintings and the people were abroad and a fair price was paid.

233. By contrast, in the Welfenschatz case, the victims of Nazi persecution were still in Germany at the time of the coerced sale. They were Jews living under dire conditions under the swastika. They were forced to experience the destruction of their livelihoods through sanctions by the Nazi state, which was engineering a retaking of the Welfenschatz. The expert opinions overwhelmingly support this conclusion.

234. The recommendation by the Advisory Commission lacks any explanation as to why the Panel—consistent with their previous assumptions and approved standards of review—excludes and denies a fair

and just resolution in the Welfenschatz case, in accordance with their own established standards.

235. The SPK and Germany refuse to provide justice to the plaintiffs, based on what must be seen as questionable findings by the Advisory Commission, obtained in a questionable, non-binding proceeding, using questionable standards.

236. On information and belief, the answer is in fact very simple: the German government simply does not wish to relinquish the Welfenschatz, no matter how ill-gotten it is.

237. In so doing, Germany has turned its back on its historic responsibility. This is particularly disappointing given Germany's decades-long and admirable confrontation with its wartime past. Sadly, Nazi-looted art in German state institutions remains a blind spot and justice is not served.

238. By contrast, at the Länder level in Germany the compensable persecution of these very members of the Consortium has been recognized and been grounds for restitution. In 2015, the Staatsgalerie Stuttgart agreed to return *Bildnis Pfalzgraf Johann III* (Portrait of Elector-Palatine Johann III), ca. 1526, by Hans Wertinger to the heirs of Saemy Rosenberg and Rosenbaum.

239. Rosenbaum and Saemy Rosenberg sold the Wertinger in 1936, but the proceeds were paid into a Nazi-blocked account—just as part of the proceeds for the Welfenschatz were. In assessing the claim to the

Wertinger, Baden-Württemberg (which administer the Staatsgalerie Stuttgart) state secretary Jürgen Walter said, "We stand by our historic responsibility to identify and return cultural goods expropriated from those persecuted by the Nazi regime." Baden Württemberg had little trouble acknowledging the Wertinger "sale" for what it is: a coerced transaction of looted art. That fact—and that fact alone—mandated restitution, just as it does with the Welfenschatz.

240. By contrast, the Advisory Commission continues to demonstrate it does not understand the core issues of Nazi repression in the 1930s, or worse, outright denies them. In March, 2015, the Advisory Commission again recommended against restitution to the heirs of a Jew persecuted in the 1930s. George Eduard Behrens, a Hamburg banker, owned *Pariser Wochentag* (Paris Weekday) by Adolph von Menzel, and sold the painting—also in 1935.

241. Yet despite being subject to the codification of the Nazi racial philosophy, the Advisory Commission continued to advance its Potemkin Village version of life in Nazi Germany:

> It is, however, undisputed in the historical record that Jewish private banks in the early years of the Third Reich were not directly affected.

242. This statement is categorically false and a violation of Germany's historic responsibility to victims of the Holocaust after 1933.

243. For present purposes, this is the deliberative body on whose decision Germany bases its retention of the Welfenschatz.

244. In its most recent decision as of the filing of this First Amended Complaint, the Advisory Commission has continued this trend.

245. The Advisory Commission was presented with a claim by the heirs of Berlin Jewish publisher Ludwig Traube for *Still Life with Fruit Basket: Pumpkin, Melons, and Cherries on an Oak Tree* by Abraham Mignon. The painting was auctioned by Traube's widow in Berlin in 1935. The heirs pointed to the "Aryanization" of the publishing company in 1933 as evidence that the sale was the result of financial peril occasioned by persecution.

246. In its November 30, 2015 recommendation, Advisory Commission conceded the point of persecution, but still did not recommend restitution. Rather, it invented a fraction of the value and recommended that the museum in possession pay the heirs that sum.

247. Taken as a whole, this trend confirms that the Advisory Commission is not, and cannot be held up as, a "fair and just solution" that Germany agreed to provide under the Washington Principles and the Collective Declaration beyond a rote recitation of the phrase when it is doing just the opposite.

248. Lastly, the SPK itself recently conceded this inadequacy. On information and belief, in a speech to the newly-opened Deutsches Zentrum Kulturgutverluste

(German Center for Cultural Property Losses) operated by the German state, SPK President Dr. Parzinger proposed material changes to the Advisory Commission. According to a report by the Commission for Looted Art in Europe, Dr. Parzinger proposed the following:

> 1. That the Commission should also act if it is called upon by only one of the two parties to a dispute. Currently it only acts if both sides agree.
>
> 2. That the administration of the Commission should be carried out by an independent secretariat and not the DZK. This must probably be seen in the context that the DZK's task is to advise e.g. museums when they are confronted with claims, but at a later state may have to act for the Commission which should be neutral. Also the heir of the collector Hans Sachs recently questioned the neutrality of the Commission in a law suit at the Magdeburg Administrative Court. He said that the Koordinierungsstelle, a for[e]runner of the DZK, had originally advised the Deutsches Historisches Museum, assisting it on how to handle the restitution claim, while it later, in 2008, acted as the secretariat of the Commission which decided on the claim.
>
> 3. That there should be transparency, primarily in connection with the research of museums, as many currently do not publish their findings if they come to the conclusion that a work was not lost due to Nazi persecution. This may also relate to the Limbach

Commission which is currently denying the Sachs heir access to the files of the 2008 procedure, and which is the cause for the current court case in Magdeburg.

4. That the Commission should have procedural rules like any arbitration body.

5. That a representative of a Jewish organisation be on the Commission.

249. According to the same report, Dr. Parzinger:

> [A]lso stressed, like the German Cultural Minister Monika Grütters the day before, that there should be no doubt that the persecution of Jews in Germany started in 1933. This was apparently a reaction to criticism by Holocaust historians concerning a remark in a brief to a US Court related to the Guelph Treasure and to the publication [] of an English translation of the Commission's Recommendation in the case of Behrens v. Düsseldorf in which the Advisory Commission had held that Jewish bankers had not been persecuted and had unimpaired access to the courts till mid 1935.
>
> Parzinger also [emphasized] that German cultural institutions confronted with claims must show (in cases of allegedly forced sales) that the price paid to a persecuted person was fair and that the persecuted person actually received the money at his/her free disposal, the implication being, contrary to the Behrens decision made by the Commission, that the work of art be considered looted if both conditions

> are not met. In its recommendation the Commission also deviated from the policies set out in the 'Handreichung', first issued in Germany in 2001.

* * *

CAUSES OF ACTION

Count I—Declaratory Relief

250. The Plaintiffs restate and incorporate by reference the allegations in Paragraphs 1-230 as though fully set forth herein.

251. An actual case or controversy has arisen between and among the Plaintiffs, the SPK, and Germany, as to the ownership of the Welfenschatz.

252. The Defendants have wrongfully detained the Welfenschatz and have refused to provide restitution to the Plaintiffs.

253. Plaintiffs are entitled to a declaratory judgment decreeing that they are the owners of the Welfenschatz and directing the Defendants to return the Welfenschatz to the Plaintiffs.

254. Plaintiffs are further entitled to a declaratory judgment decreeing that their right, title, and ownership in the Welfenschatz is superior to any held by either the SPK, Germany, or both.

Count II—Replevin

255. The Plaintiffs restate and incorporate by reference the allegations in Paragraphs 1-235 as though fully set forth herein.

256. The defendants have deprived the plaintiffs of their rightful property, the Welfenschatz.

257. The plaintiffs are entitled to the replevin of the Welfenschatz in the possession of the SPK.

Count III—Conversion

258. The Plaintiffs restate and incorporate by reference the allegations in Paragraphs 1-238 as though fully set forth herein.

259. The Welfenschatz is the rightful property of the plaintiffs, as heirs and/or successors in interest of the Consortium.

260. The SPK and Germany exercise unlawful control and dominion over the plaintiffs' property: the Welfenschatz.

261. Despite lawful demand for the return of the Welfenschatz, defendants SPK and Germany have refused to return the plaintiffs' property.

262. Plaintiffs have been damaged by the defendants' conversion in an amount to be determined at trial, but in any event not less than the value of the Welfenschatz, which by conservative estimates exceeds $250,000,000.

Count IV—Unjust Enrichment

263. The Plaintiffs restate and incorporate by reference the allegations in Paragraphs 1-243 as though fully set forth herein.

264. The SPK has wrongfully possessed the Welfenschatz for decades.

265. The SPK has used the Welfenschatz in commerce in the United States and/or outside the United States having an effect within the United States within the meaning of 28 U.S.C. § 1605(a)(2) and clarified in *OBB Personenverkehr v. Sachs* as a significant attraction and source of revenue.

266. The SPK's use of the Welfenschatz in this manner has unjustly enriched the SPK and Germany.

267. The SPK should disgorge to the plaintiffs the amounts by which it has been unjustly enriched, in an amount to be determined at trial.

Count V—Fraud in the Inducement

268. The Plaintiffs restate and incorporate by reference the allegations in Paragraphs 1-248 as though fully set forth herein.

269. The negotiations leading to the "sale" of the Welfenschatz were a sham orchestrated by the Prussian government and high-ranking Nazis through the Dresdner Bank.

270. The representations that led to the execution of the 1935 contract, including but not limited to the existence of other interested buyers and the true identity of the party in interest—the Nazi state—were knowingly false when made.

271. The Consortium reasonably relied on those false statements to their detriment.

272. As a result of the fraud perpetrated by the Prussian government and the Dresdner Bank, the Consortium was damaged.

273. As a remedy for the fraud in the inducement, the plaintiffs, as successors in interest to the Consortium, are entitled to rescission of the 1935 contract and to the return of the Welfenschatz in its entirety from the defendants, the successors in interest to Prussia and the German Reich.

Count VI—Breach of Fiduciary Duty

274. The Plaintiffs restate and incorporate by reference the allegations in Paragraphs 1-254 as though fully set forth herein.

275. As a result of the inequitable and genocidal conduct of the defendants' predecessors-in-interest, the Consortium was deprived of its property.

276. When Nazi Germany was defeated, the defendants succeeded to the interests of Prussia and Nazi Germany.

277. By virtue of the political reorganization of Germany, Germany's international committments, the Washington Principles, the Terezin Declaration, and/or the Collective Declaration, a trust—express, implied, or constructive—arose for the benefit of the Consortium and its heirs and/or successors in interest: the plaintiffs.

278. As trustees of that trust, the defendants owe the plaintiffs a duty of absolute good faith and against self-dealing,

279. The defendants have breached that fiduciary duty by refusing to restitute the Welfenschatz to the plaintiffs and by otherwise enriching themselves at the plaintiffs' expense through the use of trust property.

280. The plaintiffs have been damaged by the defendants' breach of fiduciary duty in an amount to be determined at trial, but in any event not less than the value of the Welfenschatz, which by conservative estimates exceeds $250,000,000.

Count VII—Breach of the Covenant of Good Faith and Fair Dealing

281. The Plaintiffs restate and incorporate by reference the allegations in Paragraphs 1-261 as though fully set forth herein.

282. The 1935 agreement constituted an enforceable contract.

283. Every contract has an implied term of good faith and fair dealing.

284. Throughout the negotiations leading to the "sale," the state of Prussia—of which the SPK is the direct successor—and the German Reich—of which Germany is the successor—were engaged in coercive efforts to eliminate competition and any possibility of an arms'-length transaction.

285. These actions, combined with the pretense of a straw man through the Dresdner Bank, violate the covenant of good faith and fair dealing.

286. As a result of this violation of the good faith and fair dealing by the defendants' predecessors-in-interest, the Consortium was damaged. By extension, the plaintiffs, as the Consortium's successors in interest, have been damaged in an amount to be determined at trial, but in any event not less than the value of the Welfenschatz, which by conservative estimates exceeds $250,000,000.

Count VIII—Civil Conspiracy

287. The Plaintiffs restate and incorporate by reference the allegations in Paragraphs 1-267 as though fully set forth herein.

288. Prussia and Germany conspired to deprive the Consortium of the benefits and protections of the Welfenschatz in and before 1935.

289. Since 1935, the SPK and Germany have, at various times, conspired to deprive the plaintiffs of the benefits and protections of the Welfenschatz.

290. This conspiracy was conducted for an illegal purpose—including but not limited to the concealment of the real facts surrounding the acquisition of the Welfenschatz and through illegal means—the indisputable horrors of Nazi Germany.

291. The defendants, as the legal successors to the original conspirators, have continued that conspiracy to this day.

292. By virtue of this conspiracy, the plaintiffs have been damaged in an amount to be determined at trial, but in any event not less than the value of the Welfenschatz, which by conservative estimates exceeds $250,000,000.

Count IX—Bailment

293. The Plaintiffs restate and incorporate by reference the allegations in Paragraphs 1-273 as though fully set forth herein.

294. For decades after the war, the true facts of the conspiracy behind the plot to acquire the Welfenschatz for Hitler were unknowable.

295. Since the revelation of long secret documents, the plaintiffs have been engaged in negotiations with the SPK concerning the restitution of the Welfenschatz.

296. As a result of those negotiations, an implied bailment arose pending resolution of the dispute over title to the Welfenschatz.

297. After negotiations failed, the plaintiffs demanded the return of the Welfenschatz in 2014 and the SPK refused.

298. As a result of the defendants' breach of this implied bailment, the plaintiffs have been damaged in an amount to be determined at trial, but in any event not less than the value of the Welfenschatz, which by conservative estimates exceeds $250,000,000.

Count X—Tortious Interference

299. The Plaintiffs restate and incorporate by reference the allegations in Paragraphs 1-279 as though fully set forth herein.

300. The Consortium had prospective contracts for the sale of the Welfenschatz with private buyers in Berlin and Hannover, among others.

301. The State of Prussia and Germany know of those prospective contracts.

302. The State of Prussia and Germany interfered with those prospective relationships for wrongful motives—anti-Semitism—and through wrongful means —the violent and dangerous treatment of Jews in Nazi Germany.

303. The current defendants are the successors in interest to the State of Prussia and Nazi Germany with regard to the foregoing.

304. As a result of the foregoing tortious interference, the plaintiffs have been damaged in an amount to be determined at trial, but in any event not less than the value of the Welfenschatz, which by conservative estimates exceeds $250,000,000.

PRAYERS FOR RELIEF

WHEREFORE, the plaintiffs respectfully request that the Court:

A) Enter judgment on all counts in favor of the plaintiffs; and

B) Order the defendants to return the objects known as the Welfenschatz to the plaintiffs forthwith; and/or

C) Order the defendants to pay the plaintiffs a sum of $250,000,000 or such higher amount as the Court deems just; and

D) Order the defendants to pay the plaintiffs their reasonable attorneys' fees; and

E) Enter such other and further relief as is just and proper under the circumstances.

January 14, 2016 SULLIVAN & WORCESTER LLP

/s/ Nicholas M. O'Donnell
Nicholas M. O'Donnell
(DC Bar No. 1011832)
One Post Office Square
Boston, Massachusetts 02109
Telephone: (617) 338-2800
Facsimile: (617) 338-2880
Email: nodonnell@sandw.com

Attorneys of record for plaintiffs Alan Philipp, Gerald G. Stiebel, and Jed R. Leiber

EXHIBIT 1

Abschrift.

Zwischen

der Obersten Verwaltung des Gesamthauses Braunschweig-Lüneburg

(im folgenden „ Verkäufer " genannt),

einerseits,

und

den Antiquitätenhändlern:

(1) J. & S. Goldschmidt,
(2) Z. M. Hackenbroch,
(3) J. Rosenbaum

zu Frankfurt am Main,

(im folgenden „ Käufer " genannt),

andererseits,

wird folgender

Vertrag

geschlossen:

§ 1.

Käufer erwerben von dem Verkäufer den sogenannten Welfenschatz bestehend aus 82 Stücken, wie er in dem Werke von W.A. Neumann, Reliquienschatz des Hauses Braunschweig-Lüneburg, Wien Verlag Höfder 1891, beschrieben ist und sich zur Zeit in der Bank in Aarau (Schweiz) befindet, unter der Bedingung, daß bis zum 31.Dezember 1929 eine verbindliche Erklärung der zuständigen Stellen vorliegt, Gegenstände aus dem Welfenschatz, die nach Deutschland gebracht werden, solange einem Ausfuhrverbot nicht zu unterwerfen, als sie sich im Besitze des Verkäufers oder der Käufer befinden. - Käufer sind jedoch berech-

tigt,

[illegible]igt, bis zum 31.Dezember 1929 auf diese Bedingung zu verzic[illegible]ten.

Den Käufern ist bekannt, daß dem Bundesstaate Österreich ein Vorkaufsrecht an dem Schatze zusteht, welches binnen 14 Tagen nach Einlangen der offiziellen Verständigung von dem V kauf beim Bundesministerium für Unterricht ausgeübt werden muß.

Jede Mängelhaftung des Verkäufers ist ausgeschlossen.

§ 2.

Der Kaufpreis setzt sich zusammen:

(a) aus einer festen Summe von 7,5 Millionen RM.(i.W. sieben Millionen fünfhunderttausend Reichsmark), die in folgender Weise zu zahlen ist:

3.000.000 RM bei Übergabe der Sammlung;
2.250.000 RM sechs Monate nach der Übergabe;
1.125.000 RM neun Monate nach der Übergabe;
1.125.000 RM zwölf Monate nach der Übergabe.

Der Kaufpreis ist, soweit er nicht bei Übergabe bar entrichtet wird, mit 8% zu verzinsen. Die aufgelaufenen Zinsen sind zusammen mit der jeweiligen Ratenzahlung zu leisten.

(b) Aus einer Gewinnbeteiligung in folgender Weise:

Bei

Bei einem Nutzen, den die Käufer über den Einstandspreis von 7,5 Millionen RM bei einem Weiterverkauf bis zum Betrage von 1,5 Millionen RM erzielen, beträgt die Gewinnbeteiligung des Verkäufers 33 1/3 %. An jedem darüber hinausgehenden Nutzen beträgt die Gewinnbeteiligung des Verkäufers 25 %. Keinesfalls darf jedoch die hiernach zu errechnende Gewinnbeteiligung des Verkäufers zuzüglich der ihm auf den festen Kaufpreis zu zahlenden 6 % Zinsen, mehr als 40 % des Gesamtnutzens betragen, den die Käufer beim Weiterverkauf erzielen.

Als Nutzen gilt jeder Nutzen, den Käufer beim Weiterverkauf erzielen, insbesondere z.B. auch derjenige Nutzen, der ihnen aus einem Weiterverkauf mit einer Gewinnbeteiligung zufließt. In diesem Falle ist Nutzen außer dem Einstandspreise auch das, was Käufer aus dieser Gewinnbeteiligung erhalten.

Bei der Feststellung des Gewinnes bleiben Zinsen auf das von den Käufern investierte Kapital außer Ansatz.

Wenn die Käufer andere Personen an dem Geschäft als Ganzem beteiligen, so ist der Gewinn für den Verkäufer so zu berechnen, als wären diese Personen von Anfang an mit als Käufer beteiligt.

Die Käufer werden dem Verkäufer über die von ihnen zur Abwicklung des Geschäfts abgeschlossenen Weiterverkäufe zwecks Feststellung seiner Gewinnanteile vierteljährlich Mitteilung machen. Die Auszahlung der Gewinnantei-

le beginnt, sobald die Käufer in den Besitz des Einstandspreises von 7,5 Millionen RM. gelangt sind, und erfolgt je nach Eingang.

Mit Rücksicht auf die dem Verkäufer eingeräumte Gewinnbeteiligung wird ausdrücklich vereinbart, daß Käufer nicht berechtigt sind, die gekauften Gegenstände ganz oder teilweise selber zu behalten, daß sie vielmehr verpflichtet sind, sich in jeder Weise um einen Verkauf zu bemühen.

§ 3.

Verkäufer ist bereits bemüht um einen Verkauf an amtliche deutsche Reichs- oder Staatsstellen und Stadtverwaltungen. Sollte dieser Verkauf zu einem Gesamtverkauf bis zum Oktober 1929 führen, so ist Verkäufer berechtigt, vom Vertrage zurückzutreten. Er hat in diesem Falle an Käufer ein Reugeld von mindestens einer Million RM zu bezahlen. Dieses Reugeld erhöht sich, soweit der Erlös 12,5 Millionen RM übersteigt, um 30% des über 12,5 Millionen RM erzielten Mehrerlöses bis zum Höchstbetrage von 1,5 Millionen RM. Dieses Reugeld ist zu bezahlen, nachdem Verkäufer von dem neuen Käufer die Hälfte des Kaufpreises erhalten hat, spätestens jedoch bis zum 31. Dezember 1930.

Dieses Rücktrittsrecht gegen Zahlung des vorbezeichneten Reugeldes steht dem Verkäufer auch für den Fall zu, daß eine andere bereits eingeleitete Aktion, die einen Gesamtverkauf des Schatzes bezweckt, zum Ziele führt.

§ 4.

§ 4.

Sollte bis zum 31.Dezember 1929 in Deutschland, England, Frankreich oder Italien oder in den Vereinigten Staaten eine Revolution ausbrechen oder eines dieser Länder in einen Krieg verwickelt werden, so sind Kaufer berechtigt, von dem Vertrage zurückzutreten.

§ 5.

Macht keine der Parteien von ihrem in diesem Vertrage vorgesehenen Rücktrittsrecht Gebrauch, so hat die Übergabe der Sammlung bis 15.Januar 1930 zu erfolgen. Die Gefahr geht mit der Übergabe auf die Käufer über. Gleichzeitig mit der Übergabe werden Käufer zusammen mit dem anzuzahlenden Teil des Kaufpreises dem Verkäufer eine Bankgarantie in Höhe von 4,5 Millionen RM übergeben. Käufer sind hierbei berechtigt, verschiedene Teilgarantien beizubringen. Käufer werden dem Verkäufer bis zum 15. Dezember 1929 mitteilen, wer diese Bankgarantien gibt. Der Verkäufer hat das Recht, Bankgarantien zurückzuweisen, die ihm nicht genügend Sicherheit bieten.

§ 6.

Um einen Verkauf vorbereiten zu können, wird Verkäufer baldmöglichst nach Unterzeichnung dieses Vertrages das nachstehend verzeichnete Katalogmaterial des Welfenschatzes den Käufern überlassen:

1.

1. Inventarium des Reliquienschatzes von 1482. Beglaubigte Abschrift des im Landes-Hauptarchiv zu Wolfenbüttel liegenden Manuskriptes.
2. Deckers P.: 28 lithographierte Farbentafeln des Reliquienschatzes, um 1863. 3 Exemplare.
3. Neumann W.A.: Der Reliquienschatz des Hauses Braunschweig-Lüneburg. Wien: A. Hölder 1891. 50 Exemplare.

Außerdem überläßt der Verkäufer den Käufern zu demselben Zwecke leihweise gegen Empfangsbescheinigung nachstehende Werke aus der Königlichen Ernst August-Fideikommiß-Bibliothek in Gmunden:

1. Molanus, Gerhard, Lipsanographie sive Thesaurus reliquiarum electoralis Brunsvico-Luneburgicus. 1753.
2. Origines Guelphicae herausgegeben von Ch. L. Scheid. Bd. 1-2. 3. Hannover 1751. 1752.
3. Beissel, St.: Der Reliquienschatz des Hauses Braunschweig-Lüneburg (Stimmen aus Maria-Laach 1891 Heft 5).
4. Adamy, R.: Der Reliquienschatz des Hauses Braunschweig-Lüneburg und seine Beziehungen zum Darmstädter Museum 1898.
5. Klopp, O.: Der Reliquienschatz des Hauses Braunschweig-Lüneburg. Manuscript 21 S.

Bei Rücktritt einer der beiden Parteien wird das gesamte Material dem Verkäufer zurückgegeben.

§ 7.

§ 7.

Sollten aus diesem Vertrage Streitigkeiten zwischen den Parteien entstehen, so sollen sie durch ein Schiedsgericht entschieden werden. Für dieses Schiedsgericht ernennt jede Partei einen Schiedsrichter. Die Schiedsrichter ernennen ihrerseits einen Obmann. Sollten sich die Schiedsrichter über die Person des Obmannes nicht einigen können, so soll der Präsident des Reichsgerichts in Leipzig um die Ernennung eines Obmannes gebeten werden.- Im übrigen finden auf dieses Schiedsgericht die Vorschriften der deutschen Zivilprozeßordnung Anwendung.

[illegible], den [illegible].

Oberste Verwaltung
des Gesamtarbeits-
[illegible]-Siedlung.

Dr. Knoke. gez. H. Buck.

gez. J.J.Goldschmidt.

gez. E.M.Hackenbroch.

gez. J. Rosenbaum.

[illegible]

Copy

The Upper Administration of the
House of Brunswick-Luneburg
(hereinafter referred to as "seller"),

on one side,

and

the antiquities dealers:

(1) J. & S. Goldschmidt,
(2) Z. M. Hackenbroch,
(3) J. Rosenbaum

of Frankfurt am Main,

(hereinafter referred to as the "buyers"),

on the other side,

have concluded the following

Agreement:

§ 1.

The buyers will acquire from the seller the so-called Guelph Treasure, consisting of 62 items, as is described in the work by W. A. Neumann, Reliquienschatz des Hauses Braunschweig-Lüneburg [Reliquary Treasures of the House of Brunswick-Lüneburg], Wien Verlag Holder 1891, and as is currently located in the bank in Aarun (Switzerland) with the condition that by December 31, 1929, a binding declaration from the responsible departments has been submitted for the items from the Guelph Treasure that are brought to Germany, providing that they are not subject to an export ban, as they are located in the

possession of the seller or the buyers. – However, the buyers are entitled to waive this condition by December 31, 1929.

The buyers are aware that the Federal State of Austria is entitled to a right of first refusal to the treasure, which must be exercised within 14 days of the official communication about the sale being submitted to the Federal Ministry for Education.

The seller is not liable for any defects.

§ 2.

The purchase price is comprised of the following:

a) a fixed sum of RM 7.5 million (in words: seven million, five hundred thousand Reichsmark), that is to be paid in the following manner:

   RM 3,000,000 upon the collection being handed over; RM 2,250,000 six months after handover;

   RM 1,125,000 nine months after handover;

   RM 1,125,000 twelve months after handover.

   Unless it is paid in cash upon handover, the purchase price is subject to 8% interest. The interest that is incurred must be paid together with the respective installment payment.

b) a profit-sharing arrangement in the following manner:

   In the case of a profit of RM 1.5 million that the buyers generate in excess of the acquisition price of RM 7.5 million when reselling the items, the

> profit share of the seller will amount to 33 1/3%. For any profit that exceeds this, the profit share of the seller will amount to 25%. In no case may the seller's profit share plus the 8% interest that is payable on the purchase price exceed 40% of the total profit that the buyers generate when reselling the collection.

This profit includes any profit that the buyers generate by reselling the collection, in particular, e.g., also those profits that come in from reselling the items with a profit-sharing arrangement. In this case, the profits are considered to be the purchase price plus anything that is received by the buyers from this profit-sharing arrangement.

When determining the profit, interest on the capital that has been invested by the buyers will not be included.

If the purchasers involve other persons in the transaction as a whole, the profit for the seller must be calculated as if these persons were involved as buyers right from the start.

So that the seller is able to determine its share of the profits, the buyers will inform the XXXXXX seller on a quarterly basis about the resale transactions that they have concluded in order to process the business. The payment of profit shares will begin as soon as the buyers are in possession of the purchase price of 7.5 million RM and will made according to receipt.

With consideration of the profit-sharing arrangement that was granted to the seller, it is expressly

agreed that the buyers are not entitled to fully or partially retain the purchased items themselves, and that they are obligated to attempt to resell the items in any way.

§ 3.

The seller is already attempting to make a sale to official German Reich or state departments and state administrations. If this sale leads to a total sale by December 31, 1929, the seller is entitled to withdraw from this Agreement. In this case, the seller must pay the buyers a penalty of at least one million RM. If the sales revenues exceed RM 12.5 million, this penalty will be increased by 20% of the additional revenue that is generated in excess of RM 12.5 million up to a maximum amount of RM 1.5 million. This penalty must be paid after the seller has received half of the purchase price from the new buyer, but by December 31, 1930 at the latest.

The seller is also entitled to this right of withdrawal against payment of the above-stated penalty if other already activities that have already been initiated and that aim to sell the treasure completely are successful.

§ 4.

If a revolution breaks out in Germany, England, France or Italy or in the United States before December 31, 1929, or if one of these countries becomes

involved in a war, the buyers are entitled to withdraw from the Agreement.

§ 5.

If neither of the contractual parties exercises the right to withdraw that is provided for in this Agreement, the handover of the collection must take place by January 15, 1930. The risk passes to the buyers upon handover. At the same time as the handover, the buyers together with the accounting part of the [illegible] will hand over a bank guarantee to the seller in the amount of RM 4.5 million. The buyers are entitled to contribute different partial guarantees for this. The buyers will inform the seller who will provide this bank guarantee by December 15, 1929. The seller has the right to reject bank guarantees that do not offer him enough security.

§ 6.

In order to be able to prepare a sale, the seller will, as soon as possible after signing this Agreement, provide the buyers with the Guelph Treasure catalogue material that is listed below:

1. Inventory of the reliquary treasure of 1482. Certified copy of the manuscript that is held in the state archive at Wolfenbüttel
2. Deckers P.: 26 lithograph color images of the reliquary treasure, in 1863. 3 copies.

3. Neumann W.A.: Reliquienschatz des Hauses Braunschweig-Lüneburg [Reliquary Treasure of the House of Brunswick-Lüneburg], Vienna: A. Holder 1891. 50 copies.

In addition and for the same purposes, the seller will loan the buyers the following works from the Royal Ernst August Memorial Library in Gmunden providing that a certificate of receipt is issued:

1. Molarus, Gerhard, Lipsanographie sive Thesaurus reliquirum electoral is Brunsvico-Luneburgicus. [illegible] 1783.

2. Origines Guelphicae, published by Ch. L. Scheid, volume 2. 3. Hannover 1751. 1753.

3. Beissel, St.: Der Reliquienschatz des Hauses Braunschweig-Lüneburg [The Reliquary Treasure of the House of Brunswick-Lüneburg] (voices from Karia-Lusch 1891, sheet 5).

4. Adamy, R.: Der Reliquienschatz des Hauses Braunschweig-Lüneburg and seine Beziehungen zum Darmstädter Museum [The Reliquary Treasure of the House of Brunswick-Lüneburg and its relationships to the Museum of Darmstadt] 1892.

5. Klopp, O.: Der Reliquienschatz des Hauses Braunschweig-Lüneburg [The Reliquary Treasure of the House of Brunswick-Luneburg]. Manuscript 21 S.

If one of the two contractual parties withdraws from the Agreement, all of the material will be returned to the seller.

§ 7.

If disputes arise between the contractual parties in relation to this Agreement, they should be resolved by an arbitration court. Each contractual party will appoint an arbitration judge to this arbitration court. The arbitration judges will appoint a chairman. If the arbitration judges are not able to reach an agreement about the identity of the chairman, the President of the Reich Court in Leipzig should be asked to appoint a chairman. In general, the regulations of the German Code of Civil Procedure are applicable to this arbitration court.

[illegible]

The Upper Administration of the House of Brunswick-Luneburg	signed: J. & S. Goldschmidt, signed: Z. M. Hackenbroch,
Dr. [illegible] signed [illegible]	signed: J. Rosenbaum

[LOGO] TRANSPERFECT

AFFIDAVIT OF ACCURACY

I, Courtney O'Connell, hereby certify that the following is, to the best of my knowledge and belief, a true and accurate translation of the enclosed document Agreement between the Upper Administration of the House of Brunswick-Luneburg and the antiquities

dealers: (1) J, & S. Goldschmidt, (2) Z. M. Hackenbroch, (3) J. Rosenbaum" from German into English.

/s/ Courtney O'Connell
TransPerfect Translations, Inc.
700 6th Street NW
Washington, DC 20001

Sworn to before me this
5th day of December 2014

/s/ Lauren Luberger
Signature, Notary Public

LAUREN LUBERGER
NOTARY PUBLIC
District of Columbia
My Commission Expires Aug. 31, 2018

/s/ _____
Stamp, Notary Public

Washington, D.C.

EXHIBIT 2

ANLAGE 93

RK. 13107 14 NOV. 1933

32

DER OBERBÜRGERMEISTER

FRANKFURT A. M., 9. November 1933

Betr.: Welfenschatz
= = =

[illegible]

Hochverehrter Herr Reichskanzler!

Bei Uebernahme der Macht hat der Nationalsozialismus in Frankfurt a.M. auch auf dem Gebiete der Kunst ausserordentlich trübe Verhältnisse vorgefunden. Nachdem inzwischen die gröbsten Missstände beseitigt sind, stosse ich bei dem Neuaufbau des Kunstlebens der alten Kaiserstadt auf die Frage, wie eines der höchsten Kunst- und Kulturgüter des deutschen Volkes, der im Jahre 1930 zuletzt in Frankfurt a.M. ausgestellte und dann nach Amerika gewanderte Welfenschatz dem deutschen Volke zurückgewonnen werden kann. Im Jahre 1930 wurde bekanntlich der im Besitz des Herzogs von Braunschweig befindliche alte Braunschweiger Domschatz (Welfenschatz) nach Amerika gebracht, um dort zum Verkauf gestellt zu werden. Da der ehemalige Herzog von Braunschweig in Gmunden am Traunsee ansässig war, bestand keine Möglichkeit, die Ausfuhr von Reichs wegen zu verhindern. Man musste sich vielmehr mit einer letzten Ausstellung der Schätze in Deutschland gegen

Zu-

Herrn
Reichskanzler Adolf H i t l e r
B e r l i n

Zusicherung der Ausfuhrbewilligung begnügen. Die Ausstellung, die auf weite Kreise den tiefsten Eindruck gemacht hat, fand in Frankfurt a.M. im Städel'schen Kunstinstitut statt.

Leider hatte damals weder die Stadt Frankfurt a.M. noch eine sonstige Kunststadt Deutschlands die Mittel, um den Welfenschatz durch Erwerb für Deutschland zu retten. Reich und Staat haben ebenfalls versagt, obwohl ihnen die Aufbringung der erforderlichen rund 6 Millionen Reichsmark nicht unmöglich gewesen wäre. Inzwischen sind einige Hauptstücke des Welfenschatzes in Amerika an das Museum in Cleveland veräussert worden. Der grösste Teil des Welfenschatzes ist jedoch nach zuverlässigen Meldungen noch nicht veräussert und soll sich im Gewahrsam von Bankfirmen befinden.

Als ein Hauptstück des Welfenschatzes, das sich in Gmunden befindet, ist das Evangeliar Heinrich des Löwen zu betrachten. Dieses grossartigste Werk der deutschen Buchmalerei jener Zeit zählt äusserlich (inventarmässig) nicht zum Welfenschatz, es ist deshalb auch nicht mit diesem nach Amerika gewandert; es gehört aber innerlich und zwar als ein Hauptstück dazu.

Die Sicherung des Evangeliars Heinrich des Löwen wäre für Deutschland wohl die wichtigste Tat einer planmässigen Denkmalspflege und würde umsomehr Aufmerksamkeit erregen als das Werk weiten Kreisen kaum bekannt und öffentlich nie gezeigt worden ist.

Das

Das neue Deutschland hat unter Ihrer Führung mit dem Materialismus der Vergangenheit gebrochen. Es betrachtet als sein höchstes Gut die Ehre des deutschen Volkes. Zur Wiederherstellung dieser Ehre ist auf künstlerischem Gebiet m.E. die Rückschaffung und der endgültige Erwerb jener unersetzlichen Schätze des deutschen Mittelalters, wie sie im Welfenschatz organisch vereint sind, als ein entscheidender Schritt zu bewerten. Nach sachverständigem Urteil ist heute der Ankauf zu etwa 1/3 des seinerzeitigen Wertes möglich. Es handelt sich also um einen Betrag, der verhältnismässig leicht aufzubringen sein wird. Ich darf deshalb die Bitte aussprechen, dass Sie als Führer des deutschen Volkes die gesetzlichen und geldlichen Voraussetzungen für die Rückführung des Welfenschatzes schaffen mögen.

13107 [stamp:] ANNEX 93
13170 *NOV. 14, 1933*
14565/3.3

THE LORD MAYOR

32
FRANKFURT A. M.,
November 9. 1933

Subject: Guelph Treasure *[illegible]*

= = = *[initial] L. 11.* *[illegible] 1/12.*

Esteemed Reich Chancellor!

Upon coming to power, National Socialism in Frankfurt a. M. also found extraordinarily unclear relationships in the area of art. Since then, the coarsest grievances have been resolved and in the course of reconstructing the artistic life of the old imperial city, I have come to the question of how one of the greatest artistic and cultural properties of the German people, the Guelph Treasure, which was last exhibited in Frankfurt a.M. in 1930 and then transported to America, can be won back for the German people. As is generally known, in 1930, the old Brunswick Cathedral treasure (Guelph Treasure), which was in the possession of the Duke of Brunswick, was brought to America in order to be put up for sale there. Since the former Duke of Brunswick was resident in Gmunden am Traunsee [Austria], there was no opportunity for the Reich to prevent the export. Rather, we will have to make do with one of the last exhibitions of the treasure in Germany against assurances of the export permit. The exhibition, which made the deepest impressions on a broad group of people, took place in Frankfurt a.M. in the Staderschen Kunstinstitut.

Unfortunately, at the time, neither the city of Frankfurt a.M. nor any other German artistic city had the funds to save the Guelph Treasure for Germany by purchasing it. The Reich and state likewise failed, although they would have been able to raise the approx. 6 million Reichsmarks that were required. Since then, some key pieces from the Guelph Treasure have been sold in America to the museum in Cleveland. However, according to reliable information, the largest section of the Guelph Treasure has not yet been sold and is in the safekeeping of banking companies.

The Gospels of Henry the Lion must be regarded as a key piece of the Guelph Treasure that is located in Gmunden. This work of German book illumination is the greatest of all time and is not included (in the inventory) in the Guelph Treasure and has also therefore not been moved to America; however, it belongs integrally and, indeed, as a key piece.

The securing of the Gospel of Henry the Lion would be the most important act in a systematic cultivation of historical artifacts for Germany and would attract even more attention because the work is hardly known in wide sections of the population and has never been shown to the public.

Under your leadership, the new Germany has broken with the materialism of the past. It considers the honor of the German people as its most valuable asset. In order to reclaim this honor on an artistic level, I believe the recovery and the ultimate acquisition of any irreplaceable treasures from German's middle

ages, such as they are organically combined in the Guelph Treasure, would be a decisive step. According to expert judgment, the purchase is possible at around 1/3 of its earlier value. It therefore relates to an amount that will be proportionally easy to raise. I therefore request that you, as Führer of the German people, create the legal and financial preconditions for the return of the Guelph Treasure.

Mr.
Reich Chancellor Adolf Hitler

Berlin
[illegible]

[signature]

[illegible]

[LOGO] TRANSPERFECT

AFFIDAVIT OF ACCURACY

I, Courtney O'Connell, hereby certify that the following is, to the best of my knowledge and belief, a true and accurate translation "the enclosed letter to Mr. Reich Chancellor Adolf Hitler dated November 9, 1933" from German into English.

/s/ Courtney O'Connell
TransPerfect Translations, Inc.
700 6th Street NW
Washington, DC 20001

Sworn to before me this
5th day of December 2014

/s/ Lauren Luberger
Signature, Notary Public

LAUREN LUBERGER
NOTARY PUBLIC
District of Columbia
My Commission Expires Aug. 31, 2018

/s/ _____
Stamp, Notary Public

Washington, D.C.

EXHIBIT 3

Berlin, den 04. Juli 1934 K 21189/34

Als Schreiben des Herrn Staatssekretärs:

An

Herrn Staatssekretär Dr. K ö r n e r
Berlin, Stätsministerium

Lieber Herr K ö r n e r !

In Erwiderung Ihres Schreibens vom 26. Juni d.Js. betr. den Erwerb des Welfenschatzes möchte ich Ihnen kurz die Stellungnahme meines Ressorts zu Ihrem Entwurf eines entsprech den Schreibens an den Herrn Reichskanzler mitteilen.

Zu der primären Frage, ob das Reich oder Preußen den Welfenschatz erwirbt, bemerke ich, daß nach Ansicht des Herrn Preußischen Finanzministers ein Erwerb von Seiten des Preußischen Staates wohl im Bereich der Möglichkeit liegt, vorausgesetzt, daß sich der Herr Reichsbankpräsident - in Parallele zu den vor kurzem zwischen ihm und mir geführten Verhandlungen in der Frage des Ankaufs der bei der Dresdner Bank lagernden Kunstsammlungen, über die ich dem Herrn Ministe präsidenten auf dienstlichem Wege Mitteilung gemacht habe- damit einverstanden erklärt, daß die Zahlung nicht in bar, son- dern durch die Hergabe von preußischen Schatzanweisungen er- folgt. Herr Reichsbankpräsident Schacht hat für den Fall des Er- werbes des Welfenschatzes durch den Preußischen Staat eine gleiche Finanzierung in Aussicht gestellt. Sie bedeutet, daß Preußen jetzt keine Mittel aufzubringen braucht, sondern ledi-

lich

lich einwenig drückende Verschuldung auf sich nimmt. Auf
diese Weise würde Preußen in die Lage versetzt, bei dem sp
ren Aufgehen im Reich neben vielen anderen wertvollen
Kunstschätzen auch den historisch, künstlerisch und nation
politisch wertvollen Welfenschatz in das Reich anzubringe
Eine Entscheidung über die Finanzierung wird jedoch erst
dann herbeizuführen sein, wenn zwischen Herrn Popitz und
Herrn Schacht im Zuge der abschließenden Verhandlung über
den Erwerb der Privatsammlungen eine Einigung in der Fra
des Welfenschatzes erzielt ist.

Bei dieser Gelegenheit darf ich darauf hinweisen, da
die von Ihnen als heutige Forderung des Händlerkonsortium
genannte Summe von 7 Millionen RM. - soweit ich unterrichte
bin - nicht mehr den wirklichen Verhältnissen entspricht. Di
bisher von verschiedenen Stellen geführten Verhandlungen h
ergeben, daß die Eigentümer des Welfenschatzes diesen für
weit geringere Summe, d.d. etwa für 4 bis 5 Millionen RM ab
geben bereit wären.

Was die angeführten Verhandlungen selbst betrifft, so
stimme ich Ihnen zwar darin zu, daß es nunmehr zweckmäßig w
dieselben, soweit sie nicht unbedingt im Interesse des Sta
liegen, zu untersagen.

Eine Mitteilung an das Konsortium darüber, daß von be
hördlicher Seite weder Verhandlungen geführt würden noch
führt werden könnten, halte ich aber für unzweckmäßig, da es

naturgemäß

naturgemäß dem Spürsinn des Kunsthandels nicht entgangen ist, daß höheren Ortes ein Interesse für den Welfenschatz besteht.

Zur Zeit verhandeln ohne Auftrag ein Herr Stern von der Dresdner Bank, mit Auftrag ein Herr Pilster, der uns als langjähriger Freund unserer Museen bekannt und vom Generaldirektor empfohlen worden ist, und der überdies als wohlhabender Privatsammler seinen Verhandlungskontrahenten als ernster Reflektant erscheinen wird. Herr Stern verhandelt auf der Basis von vier, Herr Pilster auf der Basis von drei Millionen. Eine zur rechten Zeit erfolgende Ausschaltung Sterns würde m.E. ihren Eindruck auf das Händlerkonsortium nicht verfehlen und Pilster in die Lage versetzen, den Schatz für einen relativ günstigen Preis zu erwerben.

Die Verhandlungen durch Pilster habe ich nach Vortrag bei dem Herrn M. P. hinleiten lassen.

Die Stadt Hannover als Verhandlungspartner auftreten zu lassen, halte ich, wie auch Herr Popitz, für unzweckmäßig.

Es erscheint mir daher zweckmäßig, von einem Herantreten an den Herrn Reichskanzler solange abzusehen, bis über die Frage des Erwerbs durch Preußen eine Besprechung zwischen dem Herrn Preußischen Finanzminister und dem Herrn Reichsbankpräsidenten stattgefunden hat.

Mit deutschem Gruß und Heil Hitler!

Ihr

Der Minister für Wiss. usw.

J.V.

gez. Dr. Stuckart

I HA Rp 151.HN No. 1234 56

Copy

Berlin, July 14, 1934 K 21189/34

As letter from the Minister of State:

To

Dr. Körner (Minister of State)
Berlin, State Ministry

Dear Mr. Körner!

In response to your letter of June 26 of this year in relation to the acquisition of the Guelph Treasure, I would like to briefly give you the opinion of my department in relation to your draft of a corresponding letter to the Reich Chancellor.

To the primary question of whether the Reich or Prussian State will acquire the Guelph Treasure, I note that in the opinion of the Prussian Minister of Finance, an acquisition by the Prussian State would be within the range of possibilities, providing that the President of the Reichsbank (in parallel the negotiations that were recently held between him and myself in relation to the question of purchasing the art collections that are situated at Dresdner Bank, about which I have notified the Prime Minister through official channels) declares himself to be in agreement that the payment would not take place in cash, but by issuing Prussian treasury bonds. Reichsbank President Schacht held out the prospect of the same kind of financing for the acquisition of the Guelph Treasure by the Prussian State. This means that Prussia does not

need to raise any funds now, but solely takes on a less onerous indebtedness. In this way, Prussia would be put in a position where it was able to subsequently bring the historically, artistically and national-politically valuable Guelph Treasure to the Reich in addition to many other valuable cultural treasures. However, a decision about the financing will first be made when an agreement is reached in relation to the question of the Guelph Treasure between Mr. Popitz and Mr. Schacht in the course of the concluding negotiations over the acquisition of the private collections.

I would like to take this opportunity to refer you to the fact that (as far as I am informed) the sum of RM 7 million that you specified as the current claim from the dealer consortium no longer corresponds to the actual situation. The negotiations that have previously been held by different entities have revealed that the owners of the Guelph Treasure would be prepared to sell this for a much lower sum of money, i.e., around 4 to 5 million RM.

In relation to the specified negotiations themselves, I agree with you in the fact that it would now be appropriate to prohibit these, insofar as they are not necessarily in the interests of the state.

However, I do not consider it to be appropriate to send a notification to the consortium, which would state that, from the perspective of the authorities, negotiations will neither be held nor permitted to be held, since it naturally has not escaped the notice of

naturally

the trade in art that higher offices have an interest in the Guelph Treasure.

Currently, a Mr. Stern from Dresdner Bank is negotiating without mandate, as well as a Mr. Pilster with mandate who is known to us as a long-term friend of our museums and has been recommended by the General Director, and who, besides this, as a wealthy private collector, appears to be regarded as a serious candidate by his counterparts in the negotiations. Mr. Stern is negotiating on the basis of four [million], Mr. Pilster on the basis of three million. If Stern is removed from the situation at the right time, this would not, in my opinion, fail to make an impression on the trading consortium and would put Pilster in a position to acquire the treasure for a relatively lower price.

I have obviously had Pilster's negotiations directed to the Prime Minister as submitted.

! *Hermann Göring*

I believe it to be inappropriate to let either the city of Hannover or Mr. Popitz appear as a negotiation partner.

It therefore appears appropriate to me to refrain from approaching the Reich Chancellor until a meeting between the Prussian Finance Minister and the Reichsbank President has taken place in relation to the question of the acquisition by Prussia.

With a German greeting and Heil Hitler!

Yours,

The Minister of Science etc.

J. V.

signed Dr. Stuckart

[LOGO]
TRANS PERFECT

AFFIDAVIT OF ACCURACY

I, Courtney O'Connell, hereby certify that the following is, to the best of my knowledge and belief, a true and accurate translation of "the enclosed letter to Dr. Körner (Minister of State), Berlin, State Ministry dated July 14, 1934" from German into English.

/s/ Courtney O'Connell
TransPerfect Translations, Inc.
700 6th Street NW
Washington, DC 20001

Sworn to before me this
5th day of December 2014

/s/ Lauren Luberger
Signature, Notary Public

LAUREN LUBERGER
NOTARY PUBLIC
District of Columbia
My Commission Expires Aug. 31, 2018

/s/ _____

Stamp, Notary Public

Washington, D.C.

700 6TH STREET, NW, 5TH FLOOR,
WASHINGTON, DC 20001 | T +1.202.347.6861 |
WWW.TRANSPERFECTLEGAL.COM
OFFICES IN 85 CITIES WORLDWIDE

EXHIBIT 4

Geheime Staatspolizei
Staatspolizeistelle
Frankfurt a.M.
II B 4 b - 2722/41/23.-

Frankfurt a.M., den 2. Mai 1941

An
den Herrn L e i t e r
der Devisenstelle - S -
in Frankfurt am Main.
Goethestrasse 9

2. Mai 1941

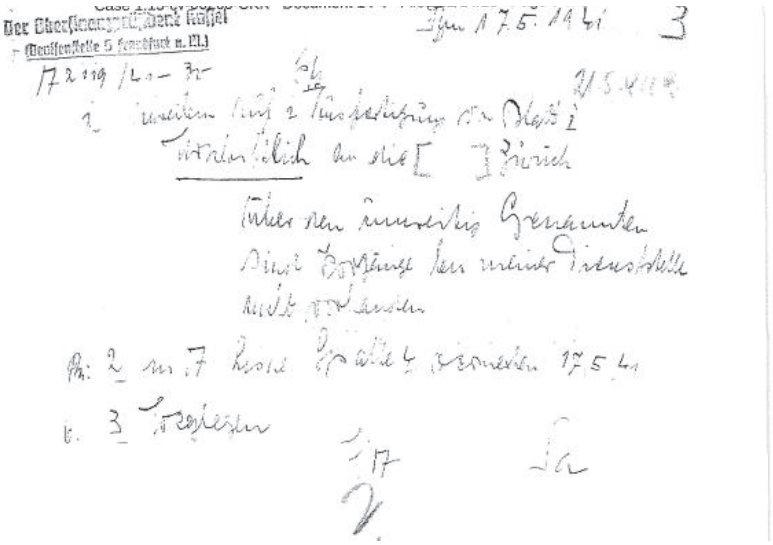
Betrifft: Ausbürgerung des - ~~Der~~ Benny Rosenberg
. . . . . geb.am 27.7.92
in Berlin
~~und seiner Ehefrau~~
~~Sohn~~ geb.am
~~Nr~~
letzter inländischer Wohnsitz: Frankfurt/M.
Friedrich - Strasse/
~~Nr~~ Nr. 61

Bezug: Ohne.

Es ist beabsichtigt, den - ~~Die~~ Obengenannten und die Familienangehörigen zur Ausbürgerung vorzuschlagen und das Vermögen zu Gunsten des Reiches zu beschlagnahmen. Ich bitte um Mitteilung der im Inland befindlichen Vermögenswerte. Gleichzeitig ist mir der Bevollmächtigte oder Vertreter im Inland mitzuteilen.

Im Auftrage:
gez: T a u b e r .

Beglaubigt:
Kanzleiangestellte.



Geheime Staatspolizei
Staatspolizeistelle
Frankfurt a.M.
XXXXXXX - I B 7 - 2722/41 -
II B 2

Frankfurt a.M., den 9. Dezember 1941.

An
den Herrn L e i t e r
der Devisenstelle -S-
in Frankfurt am Main.

Betrifft: Ausbürgerung des Juden Saemy Samson Israel
S a r a , geboren am 27.7.92 in Berlin, letzter inländischer Wohnsitz: Frankfurt/Main, Friedrichstr. 61 und Erstreckung der Ausbürgerung auf die Ehefrau Liesolotte Sara geb. Marx, geboren am 12.12.02 in Frankfurt/Main, und das Kind: Gabriele Beate Sara, geb.am 29.3.27 in Frankfurt/Main.

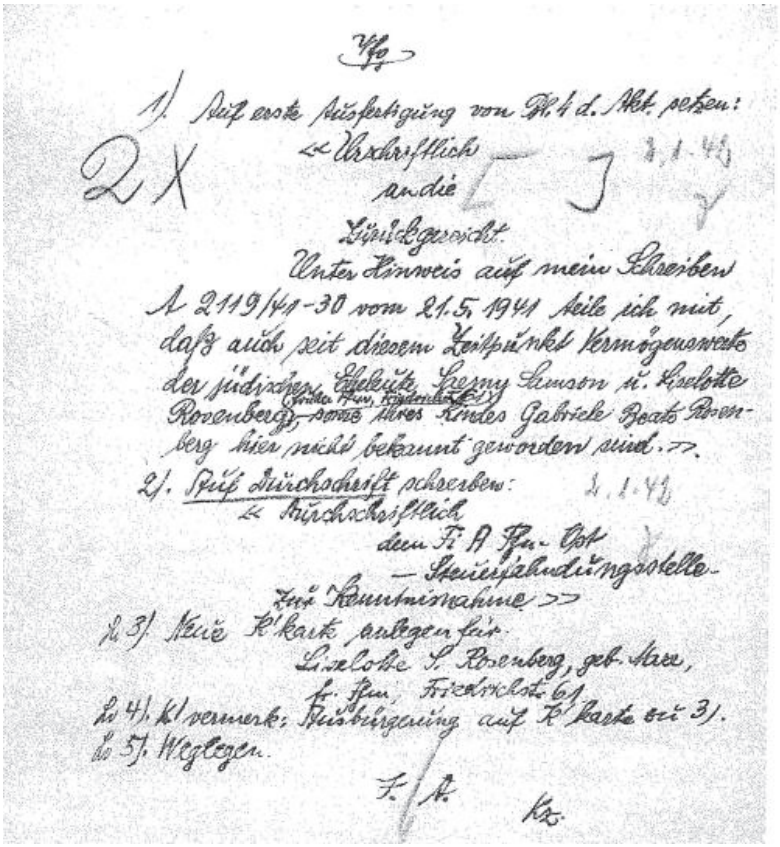
Bezug: Meine Verfügung vom 2.5.41 - II B 4 b -

Auf Grund des § 1 der Verordnung vom 28.2.35 zum Schutze von Volk und Staat beschlagnahme ich hiermit die gesamten Vermögenswerte der im Betreff genannten Personen . Ich bitte, Anträge auf Transferierung oder Erteilung von Unbedenklichkeitsbescheinigungen zur Leistung von Zahlungen ohne meine Genehmigung nicht zu gestatten. (Ausgenommen sind Zahlungen für Steuern und alle öffentlichen Abgaben.) Falls noch Vermögenswerte bekannt geworden sind, bitte ich, Vermögensanzeigen der Obengenannten nach dem Stande von heute sowie den Vortrag oder Bevollmächtigten mir mitzuteilen.

Falls dort das Umzugsgut des Genannten bekannt ist, bitte ich um Übersendung einer Liste der Gegenstände unter gleichzeitiger Angabe der Speditionsfirma bei der das Umzugsgut eingelagert ist. Die Genehmigung zum Abtransport ist nicht zu erteilen.

In Vertretung:
gez. Dr. Hüner.

Caesar



Vfg.

1) Auf erste Aufforderung von Bl. 1 d. Akt. setzen:
« Urschriftlich
an die
Zivilgericht.
Unter Hinweis auf mein Schreiben
A 2119/41-30 vom 21.5.1941 teile ich mit,
daß auch seit diesem Zeitpunkt Vermögenswerte
der jüdischen Eheleute Leeny Simson u. Charlotte
Rosenberg, sowie Ihres Kindes Gabriele Beate Rosenberg hier nicht bekannt geworden sind. ».
2) Auf Durchschrift schreiben:
« Durchschriftlich
dem Fi. A Fin. Ost
— Steuereinhebungsstelle —
zur Kenntnisnahme ».
zu 3) Neue K'karte anlegen für
Charlotte I. Rosenberg, geb. Marx,
k. Fin. Friedrichstr. 61
zu 4) Kl vermerk: Ausbürgerung auf K'karte zu 3).
zu 5) Weglegen.

F. A.

Kz.

Secret State Police
State Police Office
Frankfurt a. M.
II B 4 b *2722/41/23. —*

Frankfurt a.M., *May 2*
[handwritten:] *I* 1941

[stamp:] Strictly confidential!

To
the Manager
of the Foreign Exchange
Board — S –

[stamp:] May 7, 1941
[initials]

in Frankfurt am Main.
Goethestrasse 9

Subject: Expatriation of [typed:] *Saemy Rosenberg*
. . . . . born on *07/27/92*
in *Berlin* . . . . . .
~~and his wife~~ . . . . . .
~~nee~~ . . . . . ~~born on~~ . . . . . .
last domestic place of residence:
Frankfurt/M Friedrich – . . .Street/
~~Square~~ No. *61* . .

Reference: Without.

The intention is to recommend the expatriation of the above-named person and his/~~her~~ family members and to seize the assets in favor of the Reich. I request information about the asset values that are located domestically. At the same time, please inform me of the authorized official or representative in Germany.

[stamp:]
Secret State
Police
State Police Office
Frankfurt (Main)

On behalf of:
signed: *Tauber.*

Witnessed:
[signature]
Office clerk.

[samp:] The Chief Finance President: Kassel
(Foreign Exchange Board S Frankfurt a.M.)

[handwritten:] [illegible] *05/17/1941* 3

[handwritten:]
17 2119/41-30 *Summary* *05/21/41 [initial]*

1) write to : copy of page 1 original back to the [ ] Zurich. There is nothing available in my offices and processes about the below-named person.

[initials] *2) Note in A List, column 4 : 05/17/41*

[initials] 3) *put aside.*

[initials] [initials]

Duplicate.

December 9, 1941 [handwritten:] *4*

Frankfurt a.M.,

Secret State Police
State Police Office
Frankfurt a. M.
XXXXXX- 1 C 7 – 2722/41 -
II B 3

[stamp:] Dec. 13, 1941
[stamp:] Strictly confidential!

To
the Manager
of the Foreign Exchange Board – *S* –

in Frankfurt am Main.

Subject: Expatriation *of the Jew Saemy Samson Israel Rosenberg, born 07/27/92 in Berlin, last domestic place of residence: Frankfurt/Main, Friedrichstr. 61 and extension of the expatriation to his wife Lieselotte Sara, née Marx, born on 12/12/02 in Frankfurt/Main, and the child: Gabriele Beate Sara, born on 03/29/27 in Frankfurt/Main.*

05/02/41 – II B 4 b -

Reference: No instructions from

On the basis of § 1 of the Ordinance of 02/28/33 for the Protection of the Public and the State, I herewith seize the entire asset values of the persons who are named in the subject. Please do not allow applications for transfers or the issuing of clearance certificates to make payments without my approval.

(Excluded from this are payments for taxes and all public duties.) *If you are aware of other assets, please [illegible]*

Please inform me of the asset values of the above-named persons according to today's status as well as the authorized representative or official.

If you are aware of the goods to be removed by the named persons, please send a list of items along with the name of the shipping firm with whom the goods to be removed are stored. No approval for removal transport may be issued.

[stamp:]
Secret State
Police
State Police Office
Frankfurt (Main)

On behalf of:
signed: *Dr. Höner*

[signature]

[stamp:] The Chief Finance President: Kassel
(Foreign Exchange Board S Frankfurt a.M.)
[handwritten:] *7 2119/41-30.*

[stamp:] Dec. 19, 1941

Summary

1) on the first copy from [illegible] write:

"original sent back 01/02/42

2x to the [ ]

with reference to my letter 7 2119/41-30 of 05/21/1941, I provide the information also from this date that we here are not aware of the asset values of the Jewish

married couple Saemy Samson and Lieselotte Rosenberg (née [illegible]), their child Gabriele Beate Rosenberg.".

2) write <u>*on carbon copy:*</u> *01/02/42*

"original

to the [illegible]

- Tax Investigation Office.

for information purposes."

[initials] *3) Open new K file for*

Lieselotte S. Rosenberg, née Hase, [illegible], Friedrichstr. 61,

[initials] *4) K comment: Expatriation on K file to 3.*

[initials] *5) put aside.*

[initials]

[initials]

[LOGO]
TRANSPERFECT

AFFIDAVIT OF ACCURACY

I, Courtney O'Connell, hereby certify that the following is, to the best of my knowledge and belief, a true and accurate translation of a May 7, 1941 memorandum

from the Secret State Police to the Manager of the Foreign Exchange Board from German into English.

/s/ Courtney O'Connell
Courtney O'Connell
TransPerfect Translations, Inc.
700 6th Street NW
Washington, DC 20001

Sworn to before me this
16th day of February 2015

/s/ Lauren Luberger
Signature Notary Public

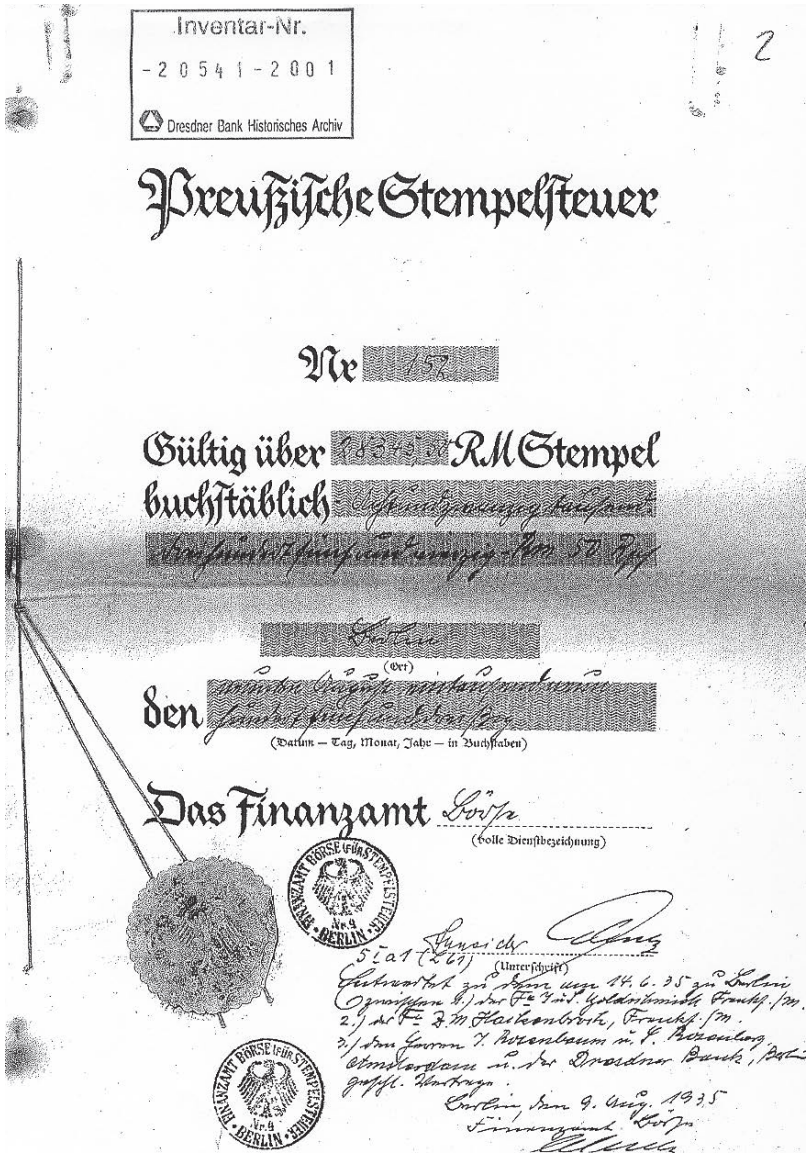
LAUREN LUBERGER
NOTARY PUBLIC
District of Columbia
My Commission Expires
Aug. 31, 2018

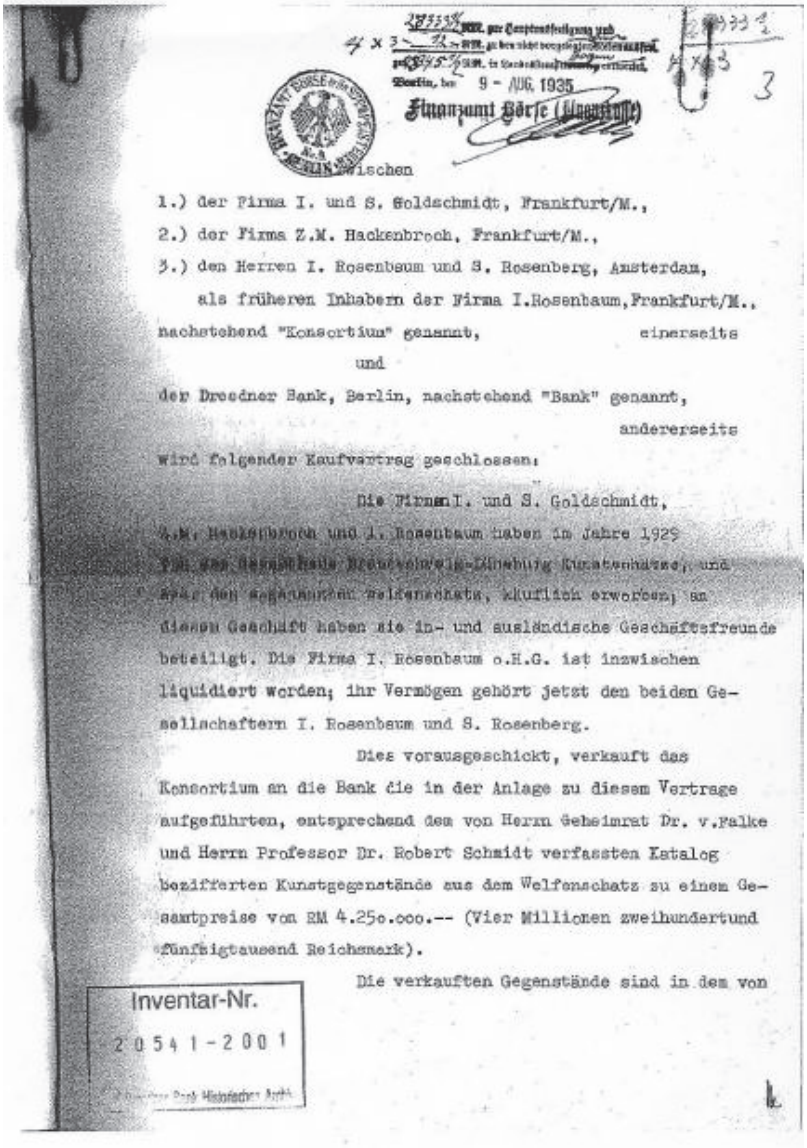
Stamp, Notary Public

Washington, D.C.

[SEAL]

EXHIBIT 5


Inventar-Nr.
-20541-2001
Dresdner Bank Historisches Archiv
Preußische Stempelsteuer
Nr
Gültig über
RM Stempel
buchstäblich
(Ort)
den
(Datum – Tag, Monat, Jahre – in Buchstaben)
Das Finanzamt
(volle Dienstbezeichnung)
(Unterschrift)
Finanzamt Börse
Berlin, den 9. Aug. 1935



Berlin, den 9 - AUG. 1935
Finanzamt Börse (Umsatzsteuer)

zwischen

1.) der Firma I. und S. Goldschmidt, Frankfurt/M.,

2.) der Firma Z.M. Hackenbroch, Frankfurt/M.,

3.) den Herren I. Rosenbaum und S. Rosenberg, Amsterdam,

als früheren Inhabern der Firma I.Rosenbaum,Frankfurt/M.,

nachstehend "Konsortium" genannt, einerseits

und

der Dresdner Bank, Berlin, nachstehend "Bank" genannt,

andererseits

wird folgender Kaufvertrag geschlossen:

Die Firmen I. und S. Goldschmidt, Z.M. Hackenbroch und I. Rosenbaum haben im Jahre 1929 [illegible] Kunstschätze, und zwar den sogenannten Welfenschatz, käuflich erworben; an diesem Geschäft haben sie in- und ausländische Geschäftsfreunde beteiligt. Die Firma I. Rosenbaum o.H.G. ist inzwischen liquidiert worden; ihr Vermögen gehört jetzt den beiden Gesellschaftern I. Rosenbaum und S. Rosenberg.

Dies vorausgeschickt, verkauft das Konsortium an die Bank die in der Anlage zu diesem Vertrage aufgeführten, entsprechend dem von Herrn Geheimrat Dr. v.Falke und Herrn Professor Dr. Robert Schmidt verfassten Katalog bezifferten Kunstgegenstände aus dem Welfenschatz zu einem Gesamtpreise von RM 4.25o.ooo.-- (Vier Millionen zweihundertund fünfzigtausend Reichsmark).

Die verkauften Gegenstände sind in dem von

Herrn Geheimrat Dr. v. Falke und Herrn Professor Dr. Robert Hohlbaum verfassten Katalog über den Welfenschatz beschrieben und in dem in dem Katalog beschriebenen Zustande an die Bank zu liefern.

Die Übernahme der Gegenstände erfolgt in Amsterdam durch einen von der Bank zu beauftragenden Sachverständigen. Als solcher ist Herr Professor Dr. Schmidt, Berlin, in Aussicht genommen.

Sämtliche durch die Lieferung der Gegenstände entstehenden Unkosten einschliesslich der Transport- und Versicherungskosten für die Überführung der Gegenstände von Amsterdam nach Berlin trägt das Konsortium. Das Konsortium verpflichtet sich, die verkauften Gegenstände bis zu ihrer Ablieferung an die Berliner staatlichen Museen gegen die üblichen Risiken zu versichern.

Die Übergabe der Kunstgegenstände hat binnen sechs Wochen nach Inkrafttreten dieses Vertrages zu erfolgen.

Der Kaufpreis ist von der Bank unverzüglich nach Übernahme der verkauften Gegenstände, jedoch nicht vor Ablauf von vier Wochen nach Inkrafttreten dieses Vertrages, anzuschaffen.

Die Anschaffung des Kaufpreises hat wie folgt zu geschehen:

RM 100 000.- sind als Vermittlungsprovision an einen Devisen-Inländer zu entrichten.

Der restliche Kaufpreis von RM 4 150 000.- ist in Höhe von RM 3 371 875.- an die Firma Z. M. Hackenbroch, Frankfurt/M.,

./.

in Frankfurt/M. zu vergüten; in Höhe von RM 778 125.- hat die Anschaffung durch Gutschrift auf einen für Herrn S. Rosenberg, Amsterdam, bei der Bank zu errichtenden Sperrmarkkonto zu erfolgen. Durch diese Anschaffungen ist die Kaufpreisschuld der Bank gegenüber dem Konsortium getilgt.

Da der auf dem Sperrmarkkonto bei der Bank gutgeschriebene Betrag zur Abgeltung der Forderungen ausländischer Beteiligter an dem Welfenschatz-Konsortium bestimmt, jedoch eine Transferierung des Betrages mit Rücksicht auf die deutsche Devisenlage z.Zt. nicht möglich ist, wird Folgendes vereinbart:

Die Bank verpflichtet sich, für Herrn S. Rosenberg eine schriftliche Genehmigung der Devisenstelle des Landes Hessen herbeizuführen, dass Herr S. Rosenberg bis zur Höhe seines bei der Bank entstehenden vorerwähnten Sperrmarkguthabens von RM 778 125.- Ankäufe von Kunstgegenständen freihändig oder auf Auktionen innerhalb Deutschlands vornehmen und die angekauften Gegenstände ausführen darf.

Herr S. Rosenberg verpflichtet sich, sich zu bemühen, binnen zwei Wochen nach Inkrafttreten dieses Vertrages in Deutschland auf dem freien Kunstmarkt, soweit es mit den Interessen der ausländischen Beteiligten vereinbar ist, Käufe zu Lasten des vorerwähnten Sperrmarkguthabens zu tätigen. Dabei darf es sich nicht um Gegenstände handeln, welche in der Liste der national wertvollen Kunstgegenstände verzeichnet sind.

Insoweit durch diese Käufe das Sperrmark-

./.

6

guthaben nicht verbraucht wird, verpflichtet sich die Bank, um den ausländischen Beteiligten die Abgeltung ihrer Forderungen in Kunstwerten zu ermöglichen, unverzüglich eine Einverständniserklärung des Preussischen Staates herbeizuführen, wonach dieser bereit ist, aus den ihm gehörigen, in Berliner Museen befindlichen Kunstwerken Gegenstände an Herrn S. Rosenberg als Treuhänder der ausländischen Beteiligten nach Massgabe folgender Bedingungen zu veräussern:

a) Die Vertreter des Preussischen Staates werden gemeinsam mit Herrn S. Rosenberg eine Liste über Kunstgegenstände, die von den Berliner staatlichen Museen zu diesem Zwecke zum Verkauf gestellt werden und welche Gegenstand der Übereignung sein sollen, aufstellen.

b) Die Preisbemessung für die einzelnen in Frage kommenden Gegenstände soll durch Verhandlung zwischen den Vertretern des Preussischen Staates und Herrn S. Rosenberg erfolgen. Insoweit über die Preisbemessung eine Einigung nicht zustandekommt, soll durch einen beiden Parteien genehmen Sachverständigen der Preis bindend festgesetzt werden. Als dieser Sachverständige wird Herr Geheimrat Dr.v.Falke bestimmt. Der Sachverständige soll seiner Preisfestsetzung den Preis, der für gleichartige Kunstgegenstände auf dem internationalen Kunstmarkt z.Zt. zu erzielen sein würde, zugrundelegen.

c) Der sich auf diese Art ergebende, für die Überlassung staatlicher Kunstgegenstände zu zahlende Gesamtaufpreis darf den Betrag nicht übersteigen, der nach Abzug der für Ankäufe auf dem freien Markt aufgewendeten Mittel aus dem ursprünglichen Sperrmarkguthaben von RM 778 125.- verbleibt.

./. 6

d) Die Aufstellung der Liste hat nach Ablauf von vierzehn Tagen nach Inkrafttreten dieses Vertrages zu erfolgen.

Die Dresdner Bank hat die Verfügungsgewalt über bekannte Kunstgegenstände. Sie ist damit einverstanden, dass aus diesen Beständen Kunstgegenstände Herrn S. Rosenberg zu den gleichen Bedingungen überlassen werden, die für die Überlassung von Kunstgegenständen aus Berliner staatlichen Museen in diesem Abkommen vorgesehen sind, und zwar mit der Massgabe, dass die Liste der zu überlassenden Kunstgegenstände von dem Generaldirektor der staatlichen Museen, Herrn Professor Dr. Kümmel, und Herrn Professor Dr. Schmidt in Gemeinschaft mit Herrn S. Rosenberg aufgestellt wird.

Sollte zwischen den Vertretern des Preussischen Staates, Herrn Professor Dr. Kümmel und Herrn Professor Dr. Schmidt, und Herrn S. Rosenberg eine Verständigung über die von dem Preussischen Staat bezw. der Dresdner Bank zu überlassenden Kunstgegenstände binnen einer Frist von vier Wochen seit Inkrafttreten des Vertrages nicht erzielt werden, so hat das Konsortium das Recht, binnen einer weiteren Frist von vier Tagen den Rücktritt von diesem Vertrage durch eingeschriebenen Brief der Bank zu erklären.

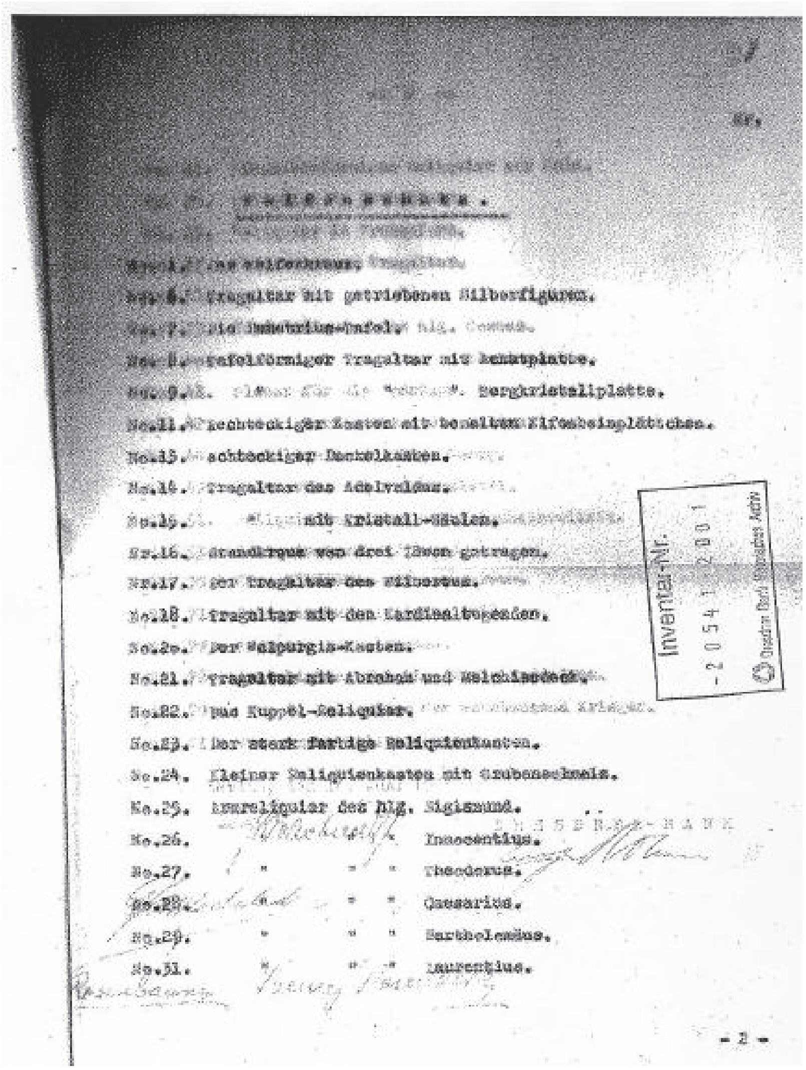
Als Tag des Beginns der Laufzeit der Fristen gilt der 17. Juni 1935.

Die Wirksamkeit dieses Abkommens ist davon abhängig, dass dieser Vertrag von der Devisenstelle schriftlich genehmigt wird.

Berlin, den 14. Juni 1935.

DRESDNER BANK

Fritz Rosenberg



Nr.

[illegible]

No.1. [illegible]kreuz.

No.6. Tragaltar mit getriebenen Silberfiguren.

No.7. Die [illegible]-Tafel.

No.8. Tafelförmiger Tragaltar mit Achatplatte.

No.9.10. [illegible] Bergkristallplatte.

No.11. Rechteckiger Kasten mit bemalten Elfenbeinplättchen.

No.13. Achteckiger Deckelkasten.

No.14. Tragaltar des Adelvoldus.

No.15. [illegible] mit Kristall-Säulen.

Nr.16. Standkreuz von drei Löwen getragen.

Nr.17. Der Tragaltar des Eilbertus.

No.18. Tragaltar mit den Kardinaltugenden.

No.20. Der Walpurgis-Kasten.

No.21. Tragaltar mit Abraham und Melchisedeck.

No.22. Das Kuppel-Reliquiar.

No.23. Der stark farbige Reliquienkasten.

No.24. Kleiner Reliquienkasten mit Grubenschmelz.

No.25. Armreliquiar des hlg. Sigismund.

No.26. " " " Innocentius.

No.27. " " " Theodorus.

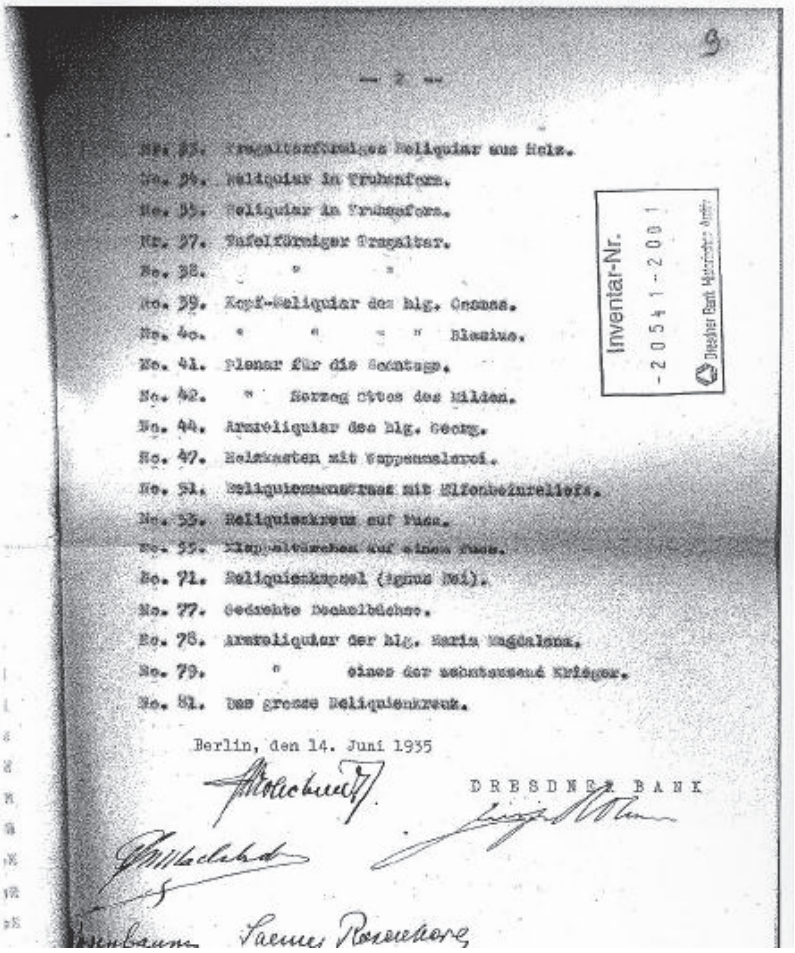
No.28. " " " Caesarius.

No.29. " " " Bartholomäus.

No.31. " " " Laurentius.

Inventar-Nr. 20541 2001

- 2 -



— 2 —

No. 35. Frühgotisches Reliquiar aus Holz.
No. 36. Reliquiar in Truhenform.
No. 37. Reliquiar in Truhenform.
No. 37. Tafelförmiger Triptychon.
No. 38. " "
No. 39. Kopf-Reliquiar des hlg. Cosmas.
No. 40. " " " " Blasius.
No. 41. Pleuar für die Sonntage.
No. 42. " Herzog Ottos des Milden.
No. 44. Armreliquiar des hlg. Georg.
No. 47. Holzkasten mit Kappenmalerei.
No. 51. Reliquienmonstranz mit Elfenbeinreliefs.
No. 53. Reliquienkreuz auf Fuss.
No. 55. Klappaltärchen auf einem Fuss.
No. 71. Reliquienkapsel (Agnus Dei).
No. 77. Gedrehte Deckelbüchse.
No. 78. Armreliquiar der hlg. Maria Magdalena.
No. 79. " eines der achttausend Krieger.
No. 81. Das grosse Reliquienkreuz.

Berlin, den 14. Juni 1935

DRESDNER BANK

Prussian Stamp Tax

No. *152*

Valid for *28,345.50* RM stamp

in words: *twenty-eight thousand,*

three hundred and forty-five RM, 50 pence

Berlin

(place)

the *[illegible] nineteen hundred and thirty-five*

(date – day, month, year – in words)

The Tax Office: [Illegible]
(complete official title)

[SEAL] TAX OFFICE EXCHANGE

FOR STAMP DUTY No. 9

[Signature] [signature]

(signature)

TAX OFFICE EXCHANGE

FOR STAMP DUTY No. 9

5Ia1 (261)
Expected [illegible] on 06/14/35 [illegible]
[Illegible] 1) Mr, I & S. Goldschmidt, Frankfurt/M
2) Mr. Z. M. Hackenbroch, Frankfurt/M
3) Mr. I. Rosenbaum and Mr. S. Rosenberg,

Amsterdam in Dresdner Bank, [illegible]
Berlin, [illegible] 9, 1935
Tax office [illegible]
[signature]

TAX OFFICE EXCHANGE
FOR STAMP DUTY No. 9 *[illegible]*
Berlin, August 9, 1935
Tax Office Exchange [illegible]
[signature]

The following purchase agreement is made between

1.) the company I. and S. Goldschmidt, Frankfurt/M.,

2.) the company Z. M. Hackenbroch, Frankfurt/M.,

3.) Mr. I. Rosenbaum and Mr. S. Rosenberg, Amsterdam,

as former owner of the company I. Rosenbaum, Frankfurt/M., hereinafter referred to as the "Consortium", on one hand,

and

Dresdner Bank, Berlin, hereinafter referred to as the "Bank",

on the other

hand

In 1929, Z. M. Hackenbroch and I. Rosenbaum purchased cultural treasures from the House of Brunswick-Lüneberg, including the so-called Guelf Treasure; they involved German and foreign business colleagues to

participate in the transaction. The company I. Rosenbaum o.H.G. has since been liquidated; it's assets now belong to the two business associates I. Rosenbaum and S. Rosenbaum.

Having stated this in advance, the Consortium is selling to the Bank the cultural items from the Guelph Treasure that are listed in the catalogue that has been compiled by Dr. v. Falke and Dr. Robert Schmidt for the total price of RM 4,250,000.00 (Four million, two hundred and fifty thousand Reichsmark).

The items that are being sold must be delivered to the Bank as the Guelph Treasure is described in the catalogue that was compiled by Dr. v. Falke and Dr. Robert Schmidt and in the condition that it is described in the catalogue.

The acceptance of the items will take place in Amsterdam by an expert who is commissioned by the Bank. Dr. Schmidt, Berlin is being considered for this role.

The Consortium is responsible for all costs that arise from the deliver of the items, including the transport and insurance costs, for transporting the items from Amsterdam to Berlin. The Consortium is obligated to [illegible] the sold items until their delivery in a Berlin state museum for the usual [illegible].

The handover of the cultural items must take place within six weeks of this agreement coming into effect.

The purchase price must be provided by the Bank immediately after acceptance of the purchased items, however, no earlier than four weeks after this agreement becomes effective.

The provision of the purchase price must take place as follows:

RM 100,000.00 must be paid as broker fee to a resident in Germany. The remaining purchase price of RM 4,150,000.00 must be issued in the amount of RM 3,371,875.00 to the company Z. M. Hackenbroch, Frankfurt/M., in Frankfurt/M.; and the amount of RM 778,125.00 must be provided in the form of a credit to a Sperrmark[1] account that has been opened at the Bank. These arrangements will enable the Bank's purchase price debt to be paid off to the Consortium.

Since the amount that is credited to the Sperrmark account at the bank is for the settlement of the claims of foreign participants in the Guelph Treasure Consortium, but a transfer of the amount is currently not possible in consideration of the situation with German exchange rates, the following is agreed:

The Bank is obligated to issue a written approval of the exchange rate position of the [illegible] for Mr. S. Rosenberg, which will permit Mr. S. Rosenberg to make purchases of cultural items privately or in auctions within Germany up to the above-stated Sperrmark

---

[1] [Special category of currency during National Socialist period for conversion of emigrants' asset values under special conditions (often punitive exchange rates). Sperrmark, lit. "blocked mark".]

credit of RM 778,125.00 that is held by the Bank and to also export the purchased items.

Mr. S. Rosenberg is obligated to attempt to make purchases against the above-stated Sperrmark credit within two weeks of this agreement coming into effect in Germany on the private art market, insofar as this is compatible with the interests of the foreign participants. In doing so, these purchases may not relate to items that are specified in the list of the nation's valuable cultural items.

If the Sperrmark credit is not used up through making these purchases, and to enable the foreign participants to settle their claims in cultural assets, the Bank is obligated to immediately issue a declaration of consent to the Prussian State whereby the state will be prepared to sell its own items from the cultural collections in the Berlin museums to Mr. S. Rosenberg as trustee of the foreign participants in accordance with the following conditions:

a) Together with Mr. S. Rosenberg, the representatives of the Prussian State will create a list of cultural items that will be provided for sale by the Berlin state museums and which items should be [illegible].

b) The pricing of the individual [illegible] items should be determined through negotiation between the representatives of the Prussian State and Mr. S. Rosenberg. If no agreement can be reached in relation to determining the pricing, an expert who has is acceptable for both parties should set a binding price. This expert will be Dr. v. Falke. The expert should base the

price that he sets on the price that would currently be paid for comparable cultural items on the international art market.

c) The total purchase price that is determined in this way and to be paid for the transfer of state cultural items may not exceed the amount that remains from the original Sperrmark credit of RM 778,125.00 after deducting any funds that were used for purchases on the private market.

d) The list must be created within fourteen days of this agreement coming into effect.

Dresdner Bank has the power of disposition over the identified cultural items. It agrees that cultural items from these portfolios will be transferred to Mr. S. Rosenberg under the same conditions that are provided for the transfer of cultural items from Berlin state museums in this agreement, and, indeed, with the stipulation that the [illegible] of the cultural items that are to be transferred will be [illegible] by the General Director of the state museums Dr. Kiimmel, and Dr. Schmidt jointly with Mr. S. Rosenberg.

If [illegible] the representatives of the Prussian State [illegible] and Dr. Schmidt are unable to reach an agreement about the cultural items that are to be transferred by the Prussian State/Dresdner Bank within a period of four weeks from the agreement coming into effect, the Consortium has the right to declare its withdrawal from this agreement. This must be declared in the form of a registered letter to the Bank and issued within a subsequent notice period of fours days.

The start date of the notice periods will be June 17, 1935.

The effectiveness of this agreement is dependent upon this agreement being approved in writing by the foreign exchange department.

Berlin, June 14, 1935

[signature] DRESDNER BANK

[signature]

[signature]

[signature]

[illegible text]

[illegible text]

Berlin, June 14, 1935

[signature] DRESDNER BANK

[signature]

[signature]

[signature]

[LOGO]
TRANSPERFECT

AFFIDAVIT OF ACCURACY

I, Courtney O'Connell, hereby certify that the following is, to the best of my knowledge and belief, a true and

accurate translation of "the enclosed document entitled 'purchase agreement' dated June 14, 1935" from German into English.

/s/ Courtney O'Connell
TransPerfect Translations, Inc.
700 6th Street NW
Washington, DC 20001

Sworn to before me this
5th day of December 2014

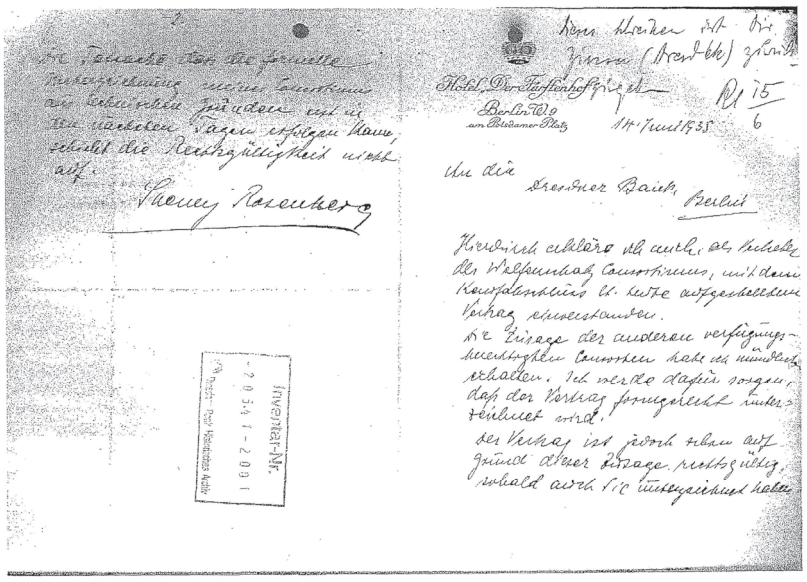
/s/ Lauren Luberger
Signature, Notary Public

LAUREN LUBERGER
NOTARY PUBLIC
District of Columbia
My Commission Expires Aug. 31, 2018

/s/ _____
Stamp, Notary Public

Washington, D.C.

EXHIBIT 6



[illegible] for [illegible] reasons, the legal effectiveness is not excluded.

[signature:] Saemy Rosenberg

[illegible]

Hotel Furstenhof
Berlin W.
at Potsdamer Platz

15
6

To *June 14,1935*

Dresdner Bank,

Berlin

herewith, as representative of the Guelph Treasure Consortium, I declare my agreement with the purchase [illegible] in accordance with the Agreement that has been made today.

I received verbal assent to the [illegible] right of disposition of the Consortium. I will ensure that the agreement is signed in accordance with form.

However, the agreement is already legally effective on the basis of this assent, as soon as you have also signed this.

[LOGO]
TRANSPERFECT

AFFIDAVIT OF ACCURACY

I, Courtney O'Connell, hereby certify that the following is, to the best of my knowledge and belief, a true and accurate translation of "the enclosed letter from Seamy Rosenberg" dated June 14, 1935" from German into English.

/s/ Courtney O'Connell
TransPerfect Translations, Inc.
700 6th Street NW
Washington, DC 20001

Sworn to before me this
5th day of December 2014

/s/ Lauren Luberger
Signature, Notary Public

LAUREN LUBERGER
NOTARY PUBLIC
District of Columbia
My Commission Expires Aug. 31, 2018

/s/ _____
Stamp, Notary Public

Washington, D.C.

EXHIBIT 7

Hitler Will Receive $2,500,000 Treasure

Guelph Collection, Long Owned By Dukes, To Be Presented To Leader As Surprise

Berlin, Oct. 30 (Special)—The bulk of the so-called Guelph treasure, which was purchased early this summer by the Prussian Government for $2,500,000, will be presented to Adolf Hitler as a "surprise gift," it was disclosed here tonight.

The treasure includes an important collection of church vessels and sacred relics, richly studded with precious stones. Long owned by the Dukes of Brunswick, the treasure was purchased by a consortium of art dealers and sold to the Prussian Government.

Gen. Hermann Wilhelm Goering, Premier of Prussia, will preside at the ceremony at which the gift to Hitler will be made.

EXHIBIT 8

Abtretung von Rechten

Ich, Herman C. Goldsmith, wohnhaft in New York, NY 10075, 40 East 78th Street, USA, Sohn und Miterbe von Julius Falk Goldschmidt (b. 1882-11-27, d, 1964-11-18), übertrage hierdurch im Wege der unwiderruflichen Abtretung meine Rechte, gleich welcher Art und aus welchem Rechtsgrund, in Bezug auf,,Restitutions- und andere Ansprüche wegen des Verkaufs des sogenannten "Welfenschatz" zu gleichen Teilen auf die Erben der früheren Frankfurter Kunst-händler Isaac Rosenbaum, Saemy Rosenberg und Zacharias Max Hackenbroch,

Die Abtretungsempfänger nehmen die Abtretung an.

(the subsequent text is a translation of the foregoing)

Cession of Rights

I, Herman C. Goldsmith, residing in New York, NY 10075, 40 East 78th Street, USA, the son and co-heir of Julius Falk Goldschmidt (b. 1882-11-27, d. 1964-11183, hereby Irevocably convey my rights, regardless of which legal nature and of which reason these may be, with regard to 'claims for restitution and other matters concerning the sale of the so-called "Weifenschatz" in the successorship of Julius Falk Goldschmidt to the heirs of the former Frankfurt art dealers Isaac Rosenbaum, Saemy Rosenberg und Zacharias Max Hackenbroch.

The cession of rights is accepted by the assignees.

/s/	New York, February 12, 2008	/s/	Herman Goldschmidt
	Place, Date		Signature

Abtretung von Rechten

Ich, James Goldschmidt, wohnhaft in New York, NY 10021, 188 East 76th Street, USA, Enkelsohn and Miterbe von Julius Falk Goldschmidt (b, 1882-11-27, d, 1964-11-18), übertrage hierdurch im Wege der unwiderruflichen Abtretung meine Rechte, gleich welcher Art and aus welchem Rechtsgrund, in Bezug auf ,,Restitutions- und andere Ansprüche wegen des Verkaufs des sogenannten "Welfenschatz" zu gleichen Teilen auf die Erben der früheren Frankfurter Kunst-händler Isaac Rosenbaum, Saemy Rosenberg und Zacharias Max Hackenbroch.

Die Abtretungsempfänger nehmen die Abtretung an.

(the subsequent text is a translation of the foregoing)

Cession of Rights

I, James Goldschmidt, residing in New York, NY 10021, 188 East 76th Street, USA, the grandson and co-heir of Julius Falk Goldschmidt (b. 1882-11-27, d. 1964-11-18), hereby irevocably convey my rights, regardless of which legal nature and of which reason these may be, with regard to 'claims for restitution and other matters concerning the sale of the so-called

"Welfenschatz" in the successorship of Julius Falk Goldschmidt to the heirs of the former Frankfurt art dealers Isaac Rosenbaum, Saemy Rosenberg und Zacharias Max Hackenbroch.

The cession of rights is accepted by the assignees.

/s/	New York, March 1, 2008	/s/	J Goldschmidt
	Place, Date		Signature

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Alan PHILIPP, Gerald G. STIEBEL and Jed R. LEIBER Plaintiffs, v. FEDERAL REPUBLIC OF GERMANY, a foreign state, and STIFTUNG PREUSSISCHER KULTURBESITZ, Defendants	Civ. Action No.: 1:15-cv-00266-CKK March 03, 2016

DECLARATION OF MR. MARTIN SEYFARTH IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS THE COMPLAINT

Martin Seyfarth declares under penalty of perjury:

1. I am a German citizen and German-qualified attorney (*Rechtsanwalt*), and have been practicing as an attorney in Germany since February 2, 1999. I am admitted to the Bar of Berlin, the capital city of Germany, and am presently the Partner-in-Charge of the Berlin office of the international law firm Wilmer Cutler Pickering Hale and Dorr LLP (*WilmerHale*).

2. I serve as German counsel for defendant Stiftung PreuBischer Kulturbesitz (the "SPK", *Prussian Cultural Heritage Foundation*) and represented it in the proceeding before the German Advisory Commission on the Return of Cultural Property Seized as

a Result of Nazi Persecution, Especially Jewish Property (the "Advisory Commission") regarding the plaintiffs' request for restitution of the "Guelph Treasure" (*Welfenschatz*). As a result of my representation of the SPK, I am familiar with the factual and legal arguments made by the plaintiffs in the proceeding before the Advisory Commission.

3. As counsel to the SPK, I reviewed the documentary evidence regarding the State of Prussia's acquisition of the Welfenschatz in 1935. Based on this documentary evidence and related historical circumstances, the SPK reached the considered judgment that the Welfenschatz was purchased in an arms'-length transaction for a fair market price, without coercion or duress.

4. After reviewing and evaluating the evidence, the parties' written submissions, and the oral arguments presented at the hearing, the Advisory Commission reached the same conclusion as the SPK and, accordingly, recommended against the return of the Welfenschatz to the requesters. It concluded that there was no evidence of duress or coercion due to Nazi persecution and that the price paid for the Welfenschatz was negotiated in an arms'-length transaction and reasonable in the context of the international market for art during the Great Depression. A true and accurate copy of the Advisory Commission's opinion and recommendation in German, and an unofficial English translation are attached as Exhibit A.

5. I have reviewed the plaintiffs' amended complaint filed in this U.S. litigation. The allegations in the amended complaint are very similar to the factual and legal arguments these same plaintiffs together with others made before the Advisory Commission. Based upon the amended complaint, it appears likely that the plaintiffs will rely on essentially the same evidence that they relied on before the Advisory Commission. I am personally familiar with this evidence, which we carefully reviewed and analyzed in reaching our conclusion that the transaction was fair and valid, and not the product of duress or coercion. I submit this declaration to provide the Court with information about the nature of the evidence in this case, in order to provide information relevant to the Court's consideration of the defendants' motion to dismiss, and in particular the forum non conveniens issue.

6. The plaintiffs' claims are centered on events occurring between 1929 and 1935, *see* Am. Compl. Paragraphs 32–153 (alleging various events in this period), so the parties have not been able to find any living person with personal knowledge of the facts relevant to the sale of the Welfenschatz in 1935. Indeed, no fact witnesses offered testimony at the hearing of the Advisory Commission. I do not know of any living fact witness who could testify as to the 1935 sale, with the exception of document custodians located in Germany.

7. As a result of the lack of any witnesses with personal knowledge of the facts, the factual evidence in this case is limited to documentary evidence. This

documentary evidence consists primarily of letters, contracts, and records regarding (1) the purchase of the Welfenschatz in 1929 by a consortium of art dealer firms located in Germany (the "Consortium"); (2) the Consortium's efforts to sell the Welfenschatz between 1929 and 1935; and (3) the Consortium's negotiations with Dresdner Bank in 1934–35, culminating in the sale of the Welfenschatz in July 1935. *See* Am. Compl. Paragraphs 32–153.

8. The relevant documents on these topics come from several sources. Based on my experience investigating this case and representing the SPK in the proceeding before the Advisory Commission, I will briefly describe a few important sources of documents that the parties in this case have relied upon.

9. One important source of documents is the archive of the Dresdner Bank. This archive contains the Bank's records from 1934–35, including extensive correspondence regarding its role in the negotiations to acquire the Welfenschatz from the Consortium on behalf of the Prussian State. *See* Am. Compl. Paragraphs 2, 86, 88-91,132-60 (alleging that the Dresdner Bank operated as intermediary in the purchase of the Welfenschatz by the Prussian State). In the course of investigating the plaintiffs' request before the Advisory Commission, lawyers and provenance researchers representing the SPK reviewed voluminous documents from the Dresdner Bank archive, and relied on many of those documents in preparing and presenting the case. Documents from this archive are relevant not only to the defendants' case but also to the plaintiffs'

case: Exhibit 5 of the amended complaint is a letter from this archive, and the plaintiffs appear to refer to the opening of the Dresdner Bank's archive in Paragraph 295 of the amended complaint.

10. Today, the Dresdner Bank archive is part of the historical archive of Commerzbank AG since Commerzbank took over Dresdner Bank in January 2009. The archive can be visited by appointment at the offices of Commerzbank AG in Frankfurt, Germany. The archival collection from the period of 1934–35 has not been digitized. Visitors are permitted to make copies of documents for a fee. Understandably, the overwhelming majority of documents in the archive are in German. This is true of all the documents in the archives relevant to this case: To my knowledge, all of the relevant correspondence and records are in German and would need to be translated and certified for litigation in the United States.

11. Out of the 198 annexes to SPK's submission to the Advisory Committee in Gemany only approximately 30 of the annexes were in English. Most of the documents relevant to the case are in German and come from the Historisches Archiv Dresdner Bank in Frankfurt, Kunstsammlungen Bottcherstrasse in Bremen, Staatsbibliothek zu Berlin, Zentralarchiv der Staatlichen Museen zu Berlin, Bundesarchiv Koblenz, Geheimes Staatsarchiv PreuBischer Kulturbesitz Berlin, Herzog Anton Ullirch-Museum in Braunschweig, Hessisches Hauptstaatsarchiv. Niedersachsisches Landesarchiv – Haupstaatsarchiv Hannover. All these documents are in German, unavailable in digital

format, and would need to be translated and certified for use in the US litigation.

12. The preceding paragraphs are not exhaustive, but provide examples of the types and sources of documents that both parties would use in litigating this case. Were this Court to deny the defendants' motion to dismiss and proceed to the merits of the case, the defendants would likely seek to offer many of these German-language documents from German archives into evidence. Because all or nearly all of these documents are in German, hundreds of pages (often poor copies that are hand written in old-fashioned German) would need to be translated into English for use in this case. From my experience, both in general as a lawyer practicing in Germany and in this specific case, legal translations from German to English are billed by the line, and can be quite expensive. For the defendants to translate into English the documents they would need to use to present their case at trial, and for those translations to be proof read by experts who are familiar with the case, would itself cost many thousands of dollars.

13. The defendants cannot rely on the accuracy of any translations offered by the plaintiffs. Indeed, based on my personal review of the plaintiffs' English translations to date, it appears there are several significant inaccuracies, some quite substantive. For example Paragraph 90 of the amended complaint reads: "Stern reported that he expected a firm offer from the Consortium, and that the price of 3.5 million RM being pursued would be a 'very low' price constituting 15% of

the Welfenschatz's value." This is a translation of Annex 106 of a SPK letter dating November 30, 2010 to the claimants before the advisory commission was approached by the parties. What the original source says is: "Das Konsortium habe geglaubt, 6-7 Mill. erhalten zu konnen, warend ich einen Preis von 3 1/2 Mil. Mark genannt hatte. Herr Koetschau sagte, dass er nicht genau wisse, was aus dem Welfenschatz bereits verkauft sei; dass aber, wenn die Vermutung sich bestatige, dass nur ca. 15% vom Gesamtwerte weg seien, der von mir genannte Preis als sehr giinstig angesehen werden konne." In my view this should be translated: "I explained that the consortium had believed it could obtain six to seven million, while I had named a price of 3 1/2 million marks. Mr. Koetschau said that he was not exactly sure which pieces of the Guelph Treasure had already been sold off, but that the price I had mentioned could be seen as a bargain, provided it could be confirmed that only about 15% of the Treasure's total value had been disposed of." Given these sorts of discrepancies, the defendants would need to obtain their own translations of any documents the plaintiffs seek to introduce into evidence. This will place an additional significant financial burden on the defendants.

14. Finally, I expect that the plaintiffs' and the defendants' translators may not come to the same conclusion regarding the appropriate English translation of many German-language documents. The parties therefore may need to hire experts to opine on the correct translation. Given my experience in other cases,

I would expect such experts to charge significant hourly rates for their work. I cannot calculate the total cost of hiring such experts without knowing how often or how complicated such translation disputes may be, but in the light of the example above I expect that such disputes will be frequent. Translation experts are thus likely to substantially increase the costs of introducing translations of German-language documents in U.S. proceedings.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed: March 3, 2016
Berlin, Germany

/s/ [Illegible]
Martin Seyfarth
(Rechtsanwalt)

Freie Universität [LOGO] **Berlin**

Fachbereich Rechtswissenschaft
Lehrstuhl für Bürgerliches Recht, Handels- und Gesellschaftsrecht, Internationales Privatrecht

Univ.-Prof. Dr.
Christian Armbrüster
Richter am Kammergericht a.D.

Van't-Hoff-Str. 8
14195 Berlin, Germany
Phone +49 30 838-52167
Fax +49 30 838-452181
E-Mail c.armbruester©fu-berlin.de
Internet www.fu-berlin.de/jura

4 March 2016

Expert Opinion of
Prof. Dr. Christian ARMBRÜSTER

I. Qualifications and assignment

1. I am a tenured professor of private law, company law, insurance law and private international law at the Free University of Berlin (*Freie Universität Berlin*), one of the leading research universities in Germany. In addition to my academic tenure, in 2007 I was appointed a judge at *Kammergericht*, which is the Court of Appeals in Berlin. As a judge of the Second Chamber of the Court of Appeals, I dealt mainly with cases involving company law. I held this position until I was elected Vice Dean of my Faculty in 2013. Since April 2015, I have been Dean of that Faculty. I have served as a legal expert for the German Government and for

the German Federal Parliament (*Deutscher Bundestag*) in connection with various legislative projects.

2. I have been retained by counsel for the Defendants in connection with a case pending in the U.S. District Court for the District of Columbia, *Philipp v. Fed. Rep. of Germany*, No. 15-cv-00266. I understand that the Plaintiffs have claimed the restitution of a collection of medieval relics known as the "Welfenschatz".

3. I have been asked to answer the following questions with regard to this claim:

(a) Given the allegations of the First Amended Complaint, what sort of legal entity was the Consortium?

(b) Would it be regarded as a German entity?

(c) Would it be regarded under German law as the owner of the Welfenschatz from 1929 to 1935?

(d) Do the Plaintiffs' current claims (to get back the Welfenschatz and / or to receive monetary damages) belong to the Consortium?

(e) If so, what steps must the Plaintiffs take under German law to establish their right to bring those claims?

4. I understand that in my answers, with regard to the facts of the case, I may only use the statements which are laid down in the First Amended Complaint and its attachments. That is, I understand that even if certain allegations are false, I must for the purpose of U.S. litigation at this stage of the case presume that the allegations are true. Of course, if the allegations

were inaccurate, my answers to these questions might be different. My compensation does not depend in any way on the outcome of this or any other matter.

II. Characterization of the Consortium

5. The first question concerns the legal characterization of the Consortium. As will be established further below (N. 20-24), German law applies to the entity. Therefore the following analysis is based on German law. The tern "Consortium" (*Konsortium*) is used in the 1935 purchase agreement (Exhibit 5). The text of this agreement features three entities as sellers. Two of those entities are companies, whereas the third entity consists of two individuals, who were acting as former owners of a third company. In the 1935 agreement all three entities are jointly referred to as the "Consortium" (*Konsortium*). Later in the same contract, the term "Consortium" is continuously used to describe the seller. The first question therefore refers to the entity that sold the Welfenschatz in 1935. An accurate characterization of the Consortium's legal status requires an analysis of the evolution of the Consortium, which starts with negotiating the acquisition of the Welfenschatz in 1929.

6. There is no information offered in the First Amended Complaint about when exactly the project of purchasing and reselling the Welfenschatz was initiated, nor is there any written agreement presented with regard to the establishment of the entity consisting of the buyers. The agreement of 1929 (Exhibit 1) was concluded, on the side of the buyers, by three

individuals, who were expressly identified as "antiquities dealers". According to German law, if a group of subjects act jointly as party to a contract this group could be characterized in various ways. It is commonly acknowledged that where the it group originally was set up by mutual agreement there will usually be a company. This is not only the current view from today's perspective but it was already unanimously expressed in contemporary sources. For instance the highly renowned large commentary on the German Civil Code, states in its 9th commentary edited by *Staudinger*, which then was – and remains to this day – a highly renowned large commentary on the German Civil Code, states that in its 9th edition, which was published in 1929, that what distinguishes a company from a "community" (*Gemeinschaft*) based on statutory provisions, such as a co-ownership with fractional amounts (*Gemeinschaft nach Bruchteilen*; Sect 741 ff. BGB) or a "community of heirs" (*Erbengemeinschaft*; Sect. 2032 ff. BGB) is that a company is founded on a contractual rather than on a statutory basis.[1] The reason for this is that when the parties have entered into a contractual relationship, this agreement will usually contain a common purpose that goes beyond the mere co-ownership of an object that is or shall be in their possession. Once such a common purpose can be established, which is in fact the case here (see N. 8), the entity is to be characterized as a company, as will be demonstrated first of all (N. 7).

---

[1] Staudinger/*Geiler*, BGB, 9th ed. 1929, Vor § 707 N. II 4.

7. In German law a company is defined, in a very broad sense, as a group of persons that pursue a common purpose. In fact this definition, which is laid down in Sect. 705 of the German Civil Code (*Buergerliches Gesetzbuch – BGB*), quite accurately describes the essence not only of a partnership but of a company in a broader sense:

> Section 705 – Contents of partnership agreement
>
> By a partnership agreement, the partners mutually put themselves under a duty to promote the achievement of a common purpose in the manner stipulated by the contract, in particular, without limitation, to make the agreed contributions.[2]

This statutory provision, as well as the other provisions of the BGB that are of interest here, first entered into force on 1 January 1900, and it remains applicable today.

8. The three individuals who negotiated the 1929 agreement did so jointly for the common purpose of reselling the Welfenschatz. This common intention can clearly be derived from the relevant circumstances. First of all, all of the three individuals were expressly acting in their capacity as antiquities dealers on behalf of their respective businesses (see below N. 15). This

---

[2] Official translation authorized by the German Ministry of Justice and for Consumer Protection, 1 http://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html#p3162 (last checked 4 March 1, 2016).

indicates that they had no intention to keep the Welfenschatz permanently in their possession, such as collectors might intend to do. Furthermore, the common aim of reselling the Welfenschatz is clearly stated in the agreement of 1929 itself, where at the end of § 2 the text states as follows:

> With consideration of the profit-sharing arrangement that was granted to the seller, it is expressly agreed that the buyers are not entitled to fully or partially retain the purchased items themselves, and that they are obligated to attempt to resell the items in any way.[3]

This clearly demonstrates that the three buyers who concluded the 1929 contract acted jointly with the common purpose of a resale. It can therefore be ruled out that the buyers were a mere co-ownership with fractional amounts, as this would be incompatible with the fact that all, three partners agreed on pursuing a common purpose. It is the very aim of the statutory provisions which govern a company (see above N. 7) to offer a group of two or more persons who join forces to achieve a certain purpose a set of rules that not only cover issues like management and representation but questions with regard to the pursuit of the common purpose as well, e.g., the dissolution of the company in case the purpose has been achieved or cannot be achieved anymore (see below N. 31). In contrast the provisions on co-ownership with fractional amounts (Sect. 741 ff. BGB) just provide for administration and

---

[3] English translation taken from Exhibit 1 of the First Amended Complaint.

division, which reflects the fact that beyond jointly holding the object for a certain period of time, there is no common purpose, such as the resale of the object, to be pursued. Therefore the entity which purchased the Welfenschatz in 1929 has to be characterized as a company.

9. It remains to be examined which kind of company the entity was. Basically German law, as most legal systems, recognizes a distinction between corporations and unincorporated firms. A corporation comes into existence when it is registered with the Municipal Court (*Amtsgericht*). Nothing in the First Amended Complaint indicates that the Consortium was registered, nor does any information contained in the First Amended Complaint point to an intention to become a corporation.

10. With regard to unincorporated firms, there is a further distinction between commercial companies and partnerships. The line between both types of entities is fluent. Generally speaking, if the entity is aimed at performing larger and permanent commercial activities, then it is to be characterized as a General Partnership (*Offene Handelsgesellschaft – OHG*), which is regulated in Sect. 105 ff. of the German Commercial Code (*Handelsgesetzbuch – HGB*). While the law requires an *OHG* to become registered with the Municipal Court, this is not a requirement for its existence. An *OHG* is legally obliged to mention its legal form in its letterhead. In contrast, a partnership organized under the German Civil Code (*Gesellschaft buergerlichen*

Rechts – GbR) is not subject to any such legal requirements.

11. It therefore needs to be clarified, with regard to the legal characterization of the buyers, whether the entity is to be characterized as a General Partnership in the sense of the Commercial Code (*OHG*), or rather as a partnership in the sense of the Civil Code (*GbR*), or as yet another kind of entity. The agreement by which the entity was formed, which does not require a specific form, is not represented in the First Amended Complaint, neither is there any information rendered about its contents. Furthermore there is no hint whatsoever in the First Amended Complaint that the entity was registered with the Municipal Court, nor did it operate under the name of an *OHG*. However, as mentioned above (N. 10), registration and communication of the legal status are not necessary requirements in order for a partnership to be characterized as *OHG* but just legal duties. The characterization rather depends on the size and permanence of business activities. In particular, an *OHG* requires a mercantile trade business that is intended to be performed on a permanent basis. In contrast, when there is only a limited economic purpose, the business is to be characterized as an "occasion partnership" (*Gelegenheitsgesellschaft*; single purpose partnership); which is a *GbR*. Thus, a partnership whose aim is to bring several subjects together in order to perform just one business project which may consist in a single transaction or in a limited number of transactions – lacks permanence and therefore, being a *Gelegenheitsgesellschaft*, constitutes

a *GbR*.[4] This is true independently from the volume of the transaction or the time that is required for its performance. For instance, a joint venture between several large building companies who join forces in order to construct a motorway section is usually to be characterized as a *GbR*.

12. The purpose of jointly buying and reselling a particular object or set of objects is mentioned in contemporary literature as a classic case of an "occasion partnership" (*Gelegenheitsgesellschaft*) and therefore as a *GbR*.[5] This view is entirely confirmed by case law. For instance, in a decision by the then highest-ranking German Civil Court, the *Reichsgericht* (*RG*),[6] the joint acquisition of a piece of land with the intention of reselling it on joint account was classified as a *GbR*.[7] Another example for an "occasion partnership" that was consistently characterized as a *GbR* by the *Reichsgericht* is a consortium of several banks for the issue of bonds.[8] This ease law has been adopted by the Federal Court (*Bundesgerichtshof – BGH*), as the successor of the *Reichsgericht*. For instance, in 2011 the *Bundesgerichtshof* expressly characterized an agreement between two individuals to jointly erect and sell

---

[4] This is still the legal situation today; MünchKomm/*Schäfer*, BGB, 6th ed. 2013, Vor § 705 N. 87.

[5] Staudinger/*Geller* (n. 1), § 726 N. II.

[6] RG SeuffA 83, 174 (judgment of 18 Jan. 1929).

[7] This corresponds with the view taken in contemporary academic literature; see e.g. *Soergel*, BGB, 5th ed. 1931, § 726 N. 2.

[8] RGZ 56, 206, 209 (judgment of 11 Dec. 1903); RGZ 56, 297, 299 (judgment of 9 Jan. 1904).

homes as a *GbR*, as their cooperation was limited to this building project.[9]

13. The assessment that the Consortium is to be characterized as a *GbR* is further confirmed by an analysis of the 1935 purchase agreement, in which the then sellers are called the "Consortium" ("*Konsortium*") in short. In fact, in the 1929 edition of the commentary edited by Staudinger, this term is equated with the term "*Gelegenheitsgesellschaft*",[10] which, as shown above in N. 11 f., is a typical and classical kind of a *GbR*. Furthermore the most widespread one-volume commentary on the BGB, edited by *Palandt*, and a key source of reference to this day, when it was first published in 1939, expressly used the very term consortium ("*Konsortien*", which is the plural form) in order to describe an "occasion partnership", as a single purpose partnership, formerly called "*Gelegenheitsgesellschaft*", as an example for this kind of *GbR*.[11] Therefore the short name under which the sellers in the 1935 agreement chose to perform this legal transaction, and which in addition Saemy Rosenberg used in his letter to Dresdner Bank dated 14 June 1935 (Exhibit 6), corresponds precisely with a term used in contemporary legal sources to describe an important (and

---

[9] BGH NJW 2011, 1730 N. 10 (judgment of 22 Feb. 2011). In that case the land had been bought by one of the partners, which makes no difference with regard to the characterization as a *GbR*.

[10] Staudinger/Geiler (n. 1), Vor § 705 N. I 2 b dd; Anhang zum 14. Titel, B I.

[11] Palandt/*Friesecke*, BGB, 2nd ed. 1939, § 705 N. 9 b bb. Those two terms remain as closely associated nowadays; MünchKomm/Schäfer (n. 4), Vor § 705 N. 51.

undisputed) kind of *GbR*. As all the individuals who acted on behalf of the Consortium were professional merchants in a sophisticated market it seems correct to assume that they made use of contemporary legal terms such as "*Konsortium*" very consciously.[12] Furthermore the aforementioned letter dated 14 June 1935 confirms that Saemy Rosenberg, who performed the final negotiations leading to the agreement (First Amended Complaint, N. 149 ff.), acted not on behalf of single owners but of members of a Consortium. In fact, the letter states that "I have orally received the assent of *the other authorized members of the Consortium*. . . ."[13] (Exhibit 6; emphasis added). This is the typical way in which one of several partners, who, in the absence of a divergent agreement, according to Sect. 714, 709 (1) BGB are jointly authorized to represent the *GbR*, would behave when concluding a contract on behalf of the *GbR*. An indication to the contrary may be found in the First Amended Complaint (N. 151), when it says that S. Rosenberg stated "that the contract should be regarded as legally valid, even without *the other owners* having signed at this point." However this paraphrase of the letter's wording is inaccurate, and so is the English translation of the letter contained in the First Amended Complaint (Exhibit 6).

---

[12] It may be noted that the term "trading consortium" (*Handlerkonsortium*) was used in the ministerial fetter dated 14 Italy 1934 (Exhibit 3) as well.

[13] *Die Zusage der anderen verfügungsberechtigten Consorten habe ich mündlich erhalten*. (. . .)."

14. It remains to be determined which subjects were partners of that *GbR*. First of all, the First Amended Complaint provides no indication that any individual or any firm apart from the individuals and firms that are expressly named in the 1929 and the 1935 agreements might have been a partner of the Consortium. On the contrary the First Amended Complaint states that no such further parties belonged to the Consortium (N. 1), and that on information and belief there were just loans offered by third parties (N. 32, 152, 154). Based on these allegations, the Consortium may have consisted either of the individuals who were taking part in those transactions, or of their firms. The three individuals who feature as buyers in the 1929 agreement expressly acted in their function as antiquities dealers. Under German law, if an individual managing a business signs a contract but the contract does not state whether the signatory is acting individually or on behalf of the business, then determining whether he or she has acted on behalf of the business or him- or herself depends on the circumstances. In the 1929 contract there was express mention made of the profession of all individuals as antiquities dealers. Furthermore the object of the contract, which concerns the purchase of a collection of works of art, clearly points to the professional sphere of an antiquities dealer. It is therefore fair to assume that all of the three individuals were acting on behalf of their respective antiquities dealer businesses.

15. In the 1929 agreement itself no reference is made to the legal characterization of those three businesses.

However it may be derived from some other passages of the First Amended Complaint that Julius Falk Goldschmidt pursued his business in the firm J. & S. Goldschmidt (First Amended Complaint, N 129), that Zacharias Max Hackenbroch did so as sole owner of the firm Z M. Hackenbroch (First Amended Complaint, N. 17), and that Isaac Rosenbaum acted as co-owner of the firm I. Rosenbaum, which he owned along with Saemy Rosenberg (First Amended Complaint, N. 18, 128), and which was an *OHG* (see the 1935 purchase agreement, para. 1).

16. The First Amended Complaint (N. 1) states that the three art dealer firms which formed the Consortium were based in Frankfurt. This corresponds to the 1929 agreement according to which the three firms are located "*zu Frankfurt am Main*", and to the 1935 purchase agreement. It therefore seems correct to assume that all the three firms were German entities.

17. The assessment that the Consortium consists of those three German entities rather than of any individuals is further confirmed by a statement in the first paragraph of the 1935 purchase agreement. In that passage it is the three firms individually run by the three individuals, and not those individuals themselves, who are characterized as having bought the Welfenschatz back in 1929. Even though this statement, being part of a more recent agreement, cannot, be given binding authority with regard to the identity of the parties to an earlier contract, it clearly shows how the members of the Consortium understood the

matter, and this corresponds entirely to the legal assessment mentioned above.

18. Nothing in the First Amended Complaint suggests that there was any deliberate change with regard to the legal status of the Consortium between the dates of the 1929 and 1935 agreements. The only obvious change, which is reflected in the latter agreement, does not concern the characterization of the Consortium but the identity of one of its members, i.e., the firm I. Rosenbaum. According to the agreement, that firm had been liquidated, and its assets were afterwards held by the two former partners I. Rosenbaum and S. Rosenberg. The First Amended Complaint does not offer any more information about the way in which the assets of that liquidated firm, including its share in the Consortium, had been transferred to those two individuals Under statutory law, liquidation of an *OHG* requires a distribution of all the remaining assets. After liquidation, the question whether the former partners of the firm become individual members of the Consortium would usually depend on the Consortium agreement, which is not made available in the First Amended Complaint. It is possible that I. Rosenbaum's share in the Consortium went to one former partner of the firm only, but that the former partners did not want to disclose this. However there is no need for any speculation here, as in any case it is obvious that in the 1935 agreement I. Rosenbaum and S. Rosenberg jointly represented their interest in the assets of the legal successor of the firm I. Rosenbaum This is clearly shown by the fact that both these individuals were listed jointly as

entity "No. 3" ("3.)") of the Consortium, along with the two firms which were still operating at that time, and which both were listed as entities "No. 1" ("*1.*)") and "No. 2" ("*2.*).") of the Consortium respectively. It is therefore beyond doubt that the two firms that continued to exist fully acknowledged that I. Rosenbaum and S. Rosenberg were both representing the former firm I. Rosenbaum OHG's share in the Consortium.

19. Conclusion: The Consortium would be regarded as a *GbR*.

III. Law applicable to the Consortium

20. The question whether the Consortium would be regarded as a German entity depends on the conflict of law rules regarding partnerships. German law does not contain any statutory provisions establishing the choice of law rules with regard to partnerships. However there exists ample case law on the matter. There are basically two approaches with regard to the factors that determine the company law rules that apply to a certain company, which are the foundation theory and the so-called seat theory. While the first of these theories considers the place where the company was originally founded as the relevant fact that determines the applicable law, the seat theory holds that the company's seat is decisive. The main practical difference between those two theories is that while the place of foundation is permanent, the administrative seat might be shifted from one jurisdiction to another in the course of time, so that under the seat theory more than

just one set of company law rules may apply during the existence of a company.

21. German courts have traditionally followed the seat theory.[14] This is as true for the era between 1929 and 1935 as it is today. As early as in 1911, the *Reichsgericht* held that the seat of a religious community can only be the place where the administration is effectively performed.[15] Soon afterwards this position was confirmed with regard to trading companies,[16] and in 1927 in a case concerning a company which had its main administrative seat in Wilmington, Delaware, where the company law of Delaware was therefore considered applicable.[17] While those cases concerned companies other than a *GbR*, in 1938 the *Reichsgericht* underlined that it was a general principle of the law that the requirements of legal capacity of a company or association in the widest sense are determined by the law of the country where the administrative seat is located.[18] This view has been upheld in German case law to this day, even though there have been some concessions made with regard to European Court of Justice jurisdiction concerning companies from other EU member states, which is not of any relevance here.

---

[14] For a comprehensive account, see MünchKomm/*Kindler*, BGB, 6th ed. 2015, IntGesR N. 358, 420.

[15] RGZ 77, 19, 22 (judgment of 29 June 1911).

[16] RGZ 83, 367, 369 f. (judgment of 16 Dec. 1913); see also RGZ 92, 73, 76 (judgment of 19 Jan. 1918).

[17] RGZ 117, 215, 217 (judgment of 3 June 1927).

[18] RGZ 159, 33, 46 (judgment of 29 Oct. 1938).

22. There is no information offered in the First Amended Complaint as to where the Consortium had its administrative seat. However because all of the three member firms were located in Frankfurt/Main/ Germany at the time of the 1929 agreement it seems correct to assume that it is in Frankfurt/Main and thus in Germany that the main administrative decisions were taken. The First Amended Complaint states that by 1936 the firm J. & S. Goldschmidt had de facto been closed (N. 129), while the firm Z. M. Hackenbroch continued to exist until 1937 (N. 130), and the firm I. Rosenbaum had been liquidated by 1935 (purchase agreement of 1935, para. 1). This means that when the purchase agreement of 1935 was concluded, two of the three firms were still located in Frankfurt/Main, as is expressly confirmed in this very agreement, and thus in Germany. In addition the final negotiations that resulted in the purchase agreement of 1935 were performed by Saemy Rosenberg in Berlin / Germany (First Amended Complaint, N. 149-150). One might add that the largest part of the purchase price was to be paid in German currency, while only with regard to the settlement of the claims of foreign participants a special provision was included, which reflects the impossibility of a transfer in German currency to foreign countries (Purchase agreement of 1935, p. 2-3). The fact that similar provisions were not made with regard to the two members of the Consortium that continued to do business in Germany demonstrates that they were still active in the country at that time. This clearly indicates that the main administrative decisions of at least those two firms continued to be taken in Germany.

23. There would have to be a permanent shift of the administration of the Consortium to one single foreign country in order to assume a change of seat and therefore a change of the applicable law. One might think of the Netherlands as such a country, because this is where Isaac Rosenberg and Saemy Rosenberg had emigrated by 1935 (First Amended Complaint, N. 128, 171), and where the Welfenschatz was physically stored at least in 1933 (First Amended Complaint, N. 77-78) and in 1935 (Purchase agreement of 1935, p. 2). However the emigration of the owners of a firm that constitutes just one out of Three partners of a *GbR* does not indicate a shift of the main administrative seat of the entire *GbR*. Such a shift, which would result in the partnership losing the foundation of its existence as an active (i.e., business-making, "*werbend*") German *GbR* and therefore require its liquidation,[19] would rather demand strong and unambiguous evidence that the main administrative decisions were henceforth taken in another country. The fact that Saemy Rosenberg personally conducted negotiations with the buyer in Berlin in 1935 demonstrates that at least as far as the Welfenschatz transaction is concerned, which was the sole business purpose of the Consortium, even he, being a representative of the only one of the three firms whose owners had by then left Germany, continued to make decisions on behalf of the Consortium in Germany. As far as the physical location

[19] BGH NZG 2009, 1106 n. 5 (ruling of 25 May 2009); MünchKomm/*Kindler* (n. 14), IntGesR N. 826; *J. Koch*, ZHR 173 (2009), 101, 113.

of the objects that were to be resold is concerned, this location as such does not permit the drawing of any conclusions with regard to the place where the administrative decisions were taken. As the Federal Court has decided, the determination of the administrative seat is independent of where the assets of the company are located.[20] For these reasons it seems appropriate to assume that until 1935 the main administrative decisions were still taken in Germany.

24. Conclusion: The Consortium would be regarded as a German entity.

IV. Ownership of the Welfenschatz by the Consortium from 1929 to 1935

25. The Consortium bought the Welfenschatz in 1929. There is no form requirement for such a sales contract with regard to movables. It seems correct to assume that in the course of the conclusion of the sales contract in 1929 the necessary agreement on the transfer of ownership as well as a change of possession took place. This corresponds to the information contained in the First Amended Complaint (N. 34) that the Welfenschatz was in the possession of the Consortium between 5 October 1929 and 14 June 1935.

---

[20] BGH IPRspr 1986 Nr. 19 (jugdment of 21 March 1986); consenting: OLG Hamm NJW-RR 1995, 469, 471 (ruling of 18 Aug. 1994); MünchHdbGesR/*Thölke*, vol. 6, 4th ed. 2013, § 1 n. 75; Spindler/Stilz/*H.-F.Müller*, AktG, 3rd ed. 2015, IntGesR N. 4.

26. It remains to be clarified whether the Consortium, being a *GbR*, had the requisite legal capacity to become owner of the Welfenschatz. A *GbR* is neither an individual nor a corporation. Therefore there has been a long-lasting academic debate about to what extent a *GbR* has legal capacity. As far as the courts are concerned, this problem was solved in 2001, when the Federal Court decided that a *GbR* has the capacity to create rights and obligations for itself when taking part in legal transactions with third parties as a *GbR* ("external company"; *Außengesellschaft*).[21] Consistent with the view that the courts, as a rule, do not create new law but simply identify what has always been the law,[22] the decision was not considered as bringing a change in the law but just a clarification.[23] This means that a German court that had to assess today whether in the period from 1929 until 1935 the Consortium was legally capable of owning the Welfenschatz would very probably conclude that it was. This is because the Consortium, by participating publicly and repeatedly in legal transactions, clearly is to be characterized as an "external company" (*Außengesellschaft*) in the sense of the aforementioned Federal Court decision. Therefore,

---

[21] BGHZ 146, 341 = NJW 2001, 1056 ff. (judgment of 29 Jan. 2001).

[22] *Zöllner*, in: Gernhuber (ed.), Tradition und Fortschritt im Recht, 1977, p. 131, 148 ff., 156; *Larenz/Canaris*, Methodenlehre der Rechtswissenschaft, 3rd ed. 1995, p. 134 f.

[23] MünchHdbGesR/*Gummert*, vol. 1, 4th ed. 2014, § 17 n. 5; *Meschkowski*, Zur Rechtsfähigkeit der BGB-Gesellschaft, 2006, p. 260.

from today's perspective, the Consortium would be considered as owner of the Welfenschatz.

27. If, in contrast, the question of ownership was to be answered in a purely historical perspective, the contemporary case law would govern the question. The *Reichsgericht*, in a judgment of 1903, was very clear on the matter: It assumed that it was not the *GbR* but the individual partners in their aggregation as members of the *GbR* to whom the rights and duties of the partnership were assigned.[24] As a consequence, it is not the *GbR* as such that is to be considered the owner of any object which it holds in order to pursue the common purpose but it is the partners as joint owners (*Gesamthänder*). However even this view does by no means assume that the individual partners are free to dispose of their individual shares in a property at their discretion. On the contrary, Sect. 719 (1) BGB rules out the possibility of such a disposal. This separation from the individual assets and from the will of each partner sharply distinguishes the *GbR* from a mere co-ownership with fractional amounts (Sect. 741 *ff*. BGB), as described above in N. 6 and 8.[25] In yet another contemporary source, which is the 1928 edition of the commentary edited by the *Reichsgericht* judges, the characteristics of the assets of a *GbR* are described as

---

[24] RGZ 56, 206, 209 (judgment of 11 Dec. 1903; *die mehreren Gesellschafter sind vereinigt die Träger des Eigentumsrechts*"). This view is shared by a majority of contemporary academic literature; see e.g. *Planck*, BGB, 4th ed. 1928, § 719 N. 1; Staudinger/*Geiler* (n. 1), Vor § 705 N. IV 1.

[25] Staudinger/*Geiler* (n. 1), Vor § 705 N.-IV.

follows: The common assets are for each single partner "as if it were alien fortune".[26]

28. By 1930-31 about half of the collection that constituted the original Welfenschatz, acquired by the Consortium in 1929, had been sold (First Amended Complaint N. 41), and thus the title of ownership had been transferred to the respective purchasers. The remaining part, to which the current claims refer, was due to be transferred from Amsterdam to Berlin, according to the purchase agreement of 1935 (p. 2). The First Amended Complaint offers no reason to doubt that this obligation was duly performed, with the result that in 1935 the ownership of this part of the Welfenschatz had changed as well.

29. Conclusion: From today's perspective the Welfenschatz was owned by the Consortium as, being a *GbR*, it had legal capacity. In the period from 1929 until 1935 the courts would have considered the partners to be joint co-owners of the Welfenschatz but to be banned by statutory partnership rules from disposing individually of their share in the property.

V. Possession of the current claims by the Consortium

30. If one assumes that the Consortium lost the ownership of the Welfenschatz under circumstances that

---

[26] Reichsgerichtsräte-Kommentar/*Sayn*, BGB, 6th ed. 1928, § 719 N. 1.

lead to claims for restitution and/or monetary damages then any such claims were originally held by the Consortium, if one assumes the legal capacity of a *GbR*, or by all the partners jointly, if one takes the historical perspective (see above N. 27). This is clear for the plaintiffs' claims for restitution of the Welfenschatz itself as those claims are based on former or even continuing rightful ownership, and restitution is aimed at reversing an unlawful deprivation of ownership or at least of possession. In fact the same is true with regard to the claims for monetary damages, as such claims, which are aimed at compensating the permanent loss of ownership, are to be considered as substitutes (*Surrogate*) of the original ownership title. As they are based on the unlawful and irreversible deprivation of ownership, they belong to the same entity that was formerly the owner of the Welfenschatz.

31. There is no hint in the First Amended Complaint as to what happened with the Consortium after the completion of the sale in 1935, It therefore seems correct to assume that the activities of the Consortium were limited to buying and reselling the Welfenschatz. This means that the Consortium had achieved its purpose by 1935. If a *GbR* entirely achieves the common purpose then it comes to an end in its capacity as a proper partnership that is promoting the achievement of a common purpose. This rule is explicitly stated in Sect. 726 BGB:

> Section 726 – Dissolution due to achievement or impossibility of its object

> The partnership comes to an end when the agreed object is achieved or its achievement has become impossible.[27]

In fact the wording of this statutory provision is not entirely precise insofar as it states that the *GbR* "comes to an end". It is rather dissolved but continues to exist, while its purpose is altered from its original object into liquidation. Contemporary literature mentions that an "occasion partnership" (*Gelegenheitsgesellschaft*), such as the Consortium, usually is dissolved when the business transaction(s) that were the purpose of the *GbR* are completed.[28] The assets of the *GbR* have to be liquidated, the debts paid and the remaining sum divided amongst the partners. During this period the *GbR* continues to exist, but it does so in a modified way, as a "liquidation company" (*Liquidattonsgesellschaft*). The German Civil Code provides a number of rules that are aimed at assuring that each partner has control of the liquidation procedure (Sect. 730 ff. BGB). It is only when this stage of liquidation is completed that the *GbR* itself has entirely ceased to exist (*Vollbeendigung*).[29] It seems correct to assume that after the sale of the Welfenschatz in 1935, the liquidation or distribution of the in kind part of the sales price and the distribution of the sales price, there were

---

[27] Official translation authorized by the German Ministry of Justice and for Consumer Protection, http://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html#P3162 (last checked 4 March 416).

[28] Staudinger/*Geiler* (n. 1), Anhang zum 14. Titel, B I 7.

[29] RGZ 46, 39, 40 (judgment of 20 March 1900); Staudinger/*Geiler* (n. 1), § 735 N. III.

no assets left for distribution. This means that the Consortium had but for the claims now submitted by the Plaintiffs, which were initially not raised – legally come to an end.

32. However, if a *GbR* has come to an end after liquidation, and later on it becomes clear that there are still assets remaining, then the *GbR* continues to exist, as it has only seemingly come to an end, as will be demonstrated further below (N. 34ff). This effect as such does not require any formal steps to be taken.

33. Conclusion: The current claims belong to the Consortium, which continues to exist until those claims, being newly-discovered assets of the Consortium, are fully and properly liquidated.

VI. The Plaintiffs' standing to assert claims belonging to the Consortium

34. Under German law, when it is established that for whatever reason certain assets appear that had not been taken into account at the time of liquidation, the *GbR* continues to exist. This means that, while the *GbR* continues to be dissolved, its existence has, in spite of the liquidation proceedings having been assumed to be fully completed by all partners, not yet come to an end. That was the law as early as in 1906, when the *Reichsgericht* had to decide on the matter,[30]

[30] RG JW 1906, 477 N. 41 (478; judgment of 21 May 1906); Staudinger/*Geiler* (n. 1), § 735 N. III; *see* further RG JW 1905, 430 N. 8 (judgment of 3 May 1905).

and it has ever since continued to be an undisputed rule of law.[31]

35. With regard to the assets that remain to be liquidated, the leading contemporary *Staudinger* commentary points out that these assets continue to be common property (*Gesamteigentum*) of all the partners, none of whom may claim to hold an individual share of the assets.[32] The fact that the assets are still submitted to the specific ties created by their attachment to the *GbR* has far-reaching effects. For instance the debtor of a claim which belongs to the *GbR* and which has only been identified belatedly is banned from setting off against that claim a counterclaim which he has against a partner.[33]

36. In order to liquidate the remaining (newly discovered) assets there is obviously a need for a controlled and orderly procedure. As the partners would usually have already performed a liquidation immediately after dissolution, the later procedure with regard to additional assets is called a supplementary liquidation (*Nachtragsliquidation*). This is crucial with regard to the claims which have been submitted in the First Amended Complaint, as the pursuit of any such claims would necessarily be an integral part of such a supplementary liquidation. This means that the Plaintiffs,

---

[31] Staudinger/*Geiler* (n. 1), § 735 N. III; for the situation after 1945 see e.g. BGH NJW 1979, 1987 judgment of 21 June 1979; concerning an *OHG*); *K. Schmidt*, Gesellschaftsrecht, 4th ed., 2002, § 11 V 6, p. 317 f.; MünchKomm/*Schäfer* (n. 4), § 730 N. 39.

[32] Staudinger/*Geiler* (n. 1), § 735 N. III.

[33] Staudinger/*Geiler* (n. 1), § 735 N. III.

when submitting their claims, would have to respect the statutory rules of German law regarding the supplementary liquidation. With regard to the liquidation of an *OHG*, there are special provisions in Sect. 146 HGB. As a rule, the liquidation is to be performed by all the partners as liquidators unless this authority is transferred by resolution of the partners or by the partnership agreement to individual partners or to other parties (Sect 146 (1) 1 HGB). In case that a deceased partner has several heirs, it is widely assumed that Sect. 146 (1) 2 HGB is to be applied by way of analogy to a *GbR*, meaning that the heirs of a deceased partner have to appoint a joint representative for the liquidation procedure.[34] This joint representative could then pursue claims on behalf of the *GbR*, which, according to Sect. 150 (1) HGB, has to be done together with all the other liquidators unless otherwise determined. Therefore, under German law all the heirs of each of the Consortium members – that is, the heirs of all the individuals who ran each of the three firms (see above N. 17) plus the heirs of any further member of the Consortium – have to make such an appointment, which is aimed at facilitating the liquidation procedure. The appointed joint representative would then stand for all the heirs of one Consortium member, i.e., the heirs of each of the liquidated antiquities dealer business. Other voices in academic literature assume an even higher threshold of participation, i.e., that

[34] MünchKomm/*Schäfer* (n. 4), § 730 N. 41; *Wiedemann*, Gesellschaftsrecht, vol. 2, 2004, p. 557.

each heir has to act individually.[35] There is no case law on the matter, so that both ways are options for the Plaintiffs. Either way, there is always a need for all the heirs of all the former partners of the Consortium to get involved, be it by participating in the appointment of a joint representative or by acting individually during the liquidation procedure.

37. There is a formal procedure laid down in Sect. 146 (2) HGB, which provides for an appointment of liquidators by the Municipal Court on application by a party when there is a good cause. Again there is a dispute on whether this provision is applicable, by way of analogy, to a *GbR*. The Federal Court has accepted this in a case where the *GbR* involved a huge number of investors as partners ("*kapitalistische GbR*").[36] However there is not yet any case law with regard to smaller *GbRs*, and in doctrine the matter is discussed controversially: While some academics assume that Sect. 146 (2) HGB applies to that kind of *GbR* ("*personalistische GbR*"), which is at stake here,[37] others argue that this is not the case.[38] This latter position refers to a judgment of the Federal Court[39] which principally rules out the necessity to appoint an emergency managing director for a *GbR*. However as the matter has not yet been decided by the courts, it is an option for

---

[35] Soergel/*Hadding/Kießling*, BGB, 13th ed., 2011, § 730 n. 15; Erman/*H.P.Westermann*, BGB, 14th ed., 14, § 730 n. 7.

[36] BGH NJW 2011, 3087 n. 19 (judgment of 5 July 2011).

[37] *Wiedemann* (n. 34), p. 557.

[38] *Bergmann*, LMK 2015, 366551.

[39] BGB NJW 2014, 3779 (ruling of 23 Sept. 2014).

the Plaintiffs to apply for the appointment of liquidators by the Municipal Court. Nothing in the First Amended Complaint suggests that the Plaintiffs (or another party) have sought or obtained such an appointment.

38. In any case, as the *GbR* continues to exist, basically the same set of rules applies which governed the preceding regular liquidation. This procedure is determined by statutory law (Sect. 730 ff. BGB; see above N. 31): The aim of the applicable statutory rules is to assure that there is transparency and control of the liquidation, and that all former partners or their successors are treated justly and equally. Even during the regular liquidation, which, as mentioned before, usually takes place shortly after the *GbR* has been dissolved, all partners are entitled to jointly manage the *GbR's* affairs even if the partnership agreement grants this right to individual partners (Sect. 730 (2) 2 BGB). The Federal Court has shown no readiness to allow for exceptions from that principle, but rather underlines that during liquidation the partners' interest in inspection and control becomes predominant.[40]

39. This means that the Plaintiffs, even if they are heirs to some of the members of the Consortium, under the applicable rules of German law, cannot submit individual claims with regard to the Welfenschatz. As heirs to a partner in a *GbR*, they are rather bound to the statutory provisions of Sect. 146 HGB and of Sect. 730 ff. BGB, which require a regular and ordered

---

[40] BGB NJW 2011, 3087 n. 10 ff., 17 (judgment of 5 July 2011).

liquidation that ensures a just and equal treatment of all persons who may have a claim in the assets of the dissolved *GbR*. Therefore they would have to establish that they have been authorized to submit the claims by all the heirs of all the three firms that acted on behalf of the Consortium and, in addition, of all the heirs of any further member of the Consortium. While this kind of authorization is not subject to any formal requirement, it rests with the Plaintiffs to submit evidence if the required authorization by all the heirs is contested by the Defendants.

40. The Plaintiffs appear to contend that they have standing to assert claims belonging to the Consortium because they are heirs to or "authorized agents in fact" (First Amended Complaint, N. 20) for the heirs to the former members of the Consortium. To have standing under German law, the plaintiffs would need to prove these allegations by showing either that all of the heirs of the three art dealer firms are participating in this suit or that they have authorized the plaintiffs to act as joint representatives for all of the art dealer firms' heirs (see above N. 36). In addition, the plaintiffs would need to prove their allegation that these three art dealer firms were the only members of the Consortium, which appears to raise a substantial question of fact, as the First Amended Complaint repeatedly mentions several "money lenders" (First Amended Complaint, N. 32, 152, 154), who, under German law, might well qualify as non-managing partners of the *GbR*. Furthermore the 1935 agreement (Exhibit 5) expressly refers to "foreign parties to the Guelph Treasure Consortium"

(*ausländische Beteiligte an dem Welfenschatz-Konsortium*). If the plaintiffs could not prove that they have standing under Sect. 146 (1) 2 HGB, either because they do not represent all the heirs of the art dealer firms or because there were other members of the Consortium, then they would not have standing to pursue these claims It is important to note that under German law, the plaintiffs would have the burden of proof on all of these standing issues. Moreover, because standing is a threshold issue, the plaintiffs would have to prove that they have Sect. 146 (1) 2 HGB standing as soon as a defendant questioned their authority to represent the *GbR*, before the parties contested the merits of the allegations.

41. Conclusion: The Plaintiffs are banned from acting individually with regard to the Welfenschatz claims. Instead they have to prove that they have standing under Sect 146 (1) 2 HGB, to apply for an appointment of liquidators by the Municipal Court, according to Sect. 146 (2) HGB, or to follow the statutory rules on the liquidation of a *GbR*, which are laid down in Sect. 730 ff. BGB and which require all heirs to all the Consortium partners, including those partners that did not act publicly on behalf of the Consortium, to appear as plaintiffs in this lawsuit. If the Plaintiffs cannot satisfy one of these provisions, they do not have authority, under German law to pursue any claims that belong to the Consortium.

/s/ Armbrüster
Prof. Dr. Christian ARMBRÜSTER

Urkundenrolle Nr. B A7/2016

es Notars Wolfang Betz,
Bayerischer Platz 1, 10779 Berlin

Die umseitige, vor mir vollzogene Unterschrift

es Herrn Prof. Dr. Christian Armbrüster,
geboren am 15.05.1964,
wohnhaft Kufsteiner Straße 12, 10825 Berlin,

usgewiesen durch Personalausweis,

eglaubige ich.

Der Notar befragte den Erschienenen, ob der Notar oder einer der mit ihm in berutlicher [illegible] mmenarbeit verbundenen Personen in der Angelegenheit, die Gegenstand der vorstehenden Beglau [illegible] ist, außerhalb seines Notaramtes tätig war oder ist. Der Erschienene verneinte die rage.

Berlin, den 07.03.2016

/s/ Betz
Betz
Notar

Kostenberechnung gem. § 19 GNotKG
Gesehäftswert: 170.000,00 € (§ 121 GNotKG)

Nr. 25100 KV (Unterschriftsbeglaubigung, Höchstgebühr)	70,00 €
Nr. 32014 KV (19% Mehrwertsteuer)	13,30 €
	83,30 €

/s/ Betz
Betz
Notar

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Alan PHILIPP, Gerald G. STIEBEL, and Jed R. LEIBER, Plaintiffs, v. FEDERAL REPUBLIC OF GERMANY, a foreign state, and STIFTUNG PREUSSISCHER KULTURBESITZ, Defendants.	Case No. 15-cv-00266 (CKK)

DECLARATION OF MR. MARKUS H. STÖTZEL IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS THE COMPLAINT

Markus H. Stötzel declares under penalty of perjury:

1. I am a German citizen and German-qualified attorney (*Rechtsanwalt*), and have been practicing as an attorney in Germany since February 27, 1997. I am duly admitted to practice law in the Federal Republic of Germany, admitted to the Bar of Marburg (District Court) and of Frankfurt am Main (Higher Regional Court).

In 1986/87 I studied Political and Economic Sciences and Literature at the University of Siegen, Germany, then graduated from Marburg University Law School in 1993 (1st Jur. State Exam, "Erstes Juristisches Staatsexamen") and passed my 2nd State Exam in 1996 ("Zweites Staatsexamen", Marburg), with a focus on Public law.

I worked as Corporate/Legal Counsel *(Syndicus-Anwalt)* and Chairman Supervisory Board *(Aufsichtsratsvorsitzender)* of a Real Estate Company in the Frankfurt am Main Area, Germany from 1997 to 2000.

I have been practicing law in the international arena for more than 15 years, representing Jewish victims' families and claimants from various countries on Holocaust-related issues and claims, with a focus on "Nazi looted art". Since then I have been involved in numerous cases that are commonly referred to as "cross-border negotiation"; by that I mean legal disputes, mostly alternative dispute resolution, with parties from various countries and a factual background spreading over a number of countries/continents and/or proceedings pending before authorities in multiple jurisdictions.

2. I serve as German counsel for the plaintiffs Alan Philipp ("Philipp"), Gerald G. Stiebel ("Stiebel"), and Jed R. Leiber ("Leiber," together with Philipp and Stiebel, the "Plaintiffs") and represented them in the proceeding before the German "Advisory Commission on the Return of Cultural Property Seized as a Result of Nazi Persecution, Especially Jewish Property" (the

"Advisory Commission") regarding the plaintiffs' request for restitution of the "Guelph Treasure" (*Welfenschatz*). I am familiar with the factual and legal arguments made by the plaintiffs and defendants in the proceeding before the Advisory Commission.

3. I therefore have direct personal knowledge of the fact that documents that evidence the conspiracy among high-ranking Nazis were not available or accessible until quite recently.

4. By my letter of June 29, 2012, sent by order and on behalf of the Plaintiffs, the claim for the return of the Welfenschatz collection was submitted for review to the Advisory Commission, followed by Defendants' approval, by letter of Prof. Dr. Hermann Parzinger, President Stiftung Preußischer Kulturbesitz (the "SPK", *Prussian Cultural Heritage Foundation*) of September 14, 2012.

5. During the procedure before the Advisory Commission, Plaintiffs presented expert evidence to the Panel and to Defendants: five written expert opinions, issued by Professor Dr. Andreas Nachama, Museum Topography of Terror, Berlin; Professor Dr. Wolf Gruner, University of Southern California, Los Angeles; Professor Dr. Stephan Meder, Gottfried Wilhelm Leibniz University, Hanover; Sotheby's of New York and by Dr. Helen Junz, Adjudicator for the Claims Resolution Tribunal (CRT), Holocaust Victim Assets Litigation, Federal Court, Eastern District, New York.

6. The Advisory Commission, among others, heard from these five experts who established the context

surrounding the sale at issue that (i) the actual market value of the collection in 1935 was close to 11,678,490 RM ("Reichsmark"), (ii) the historical background which supports the claim that the sale in issue was coercive and made under duress, and certainly cannot be characterized as one governed by free will and free choice in an open market, and (iii) the art dealers were the sole owners of the collection.

7. By letter dated December 12, 2013, Sotheby's of New York provided a letter to me, accompanying Sotheby's detailed evaluation of the Welfenschatz collection, by which Sotheby's valued the fair market value of the collection for mid-1935, when the collection was sold to Nazi-Prussia for RM 4.25 million, at 11,678,490 RM. Sotheby's expert opinion was made available to the Advisory Commission and Defendants legal counsel on December 13, 2013. A copy of this report is attached hereto as Exhibit 1.

8. Neither the qualifications nor credibility of these experts, among these Sotheby's, had been challenged during the procedure before the Advisory Commission. As such, the Defendants, SPK in particular, did not carry their burden of showing why these experts should not be accepted nor rebutted their conclusions.

9. The use of distinguished experts is particularly important in cases like this because not only under the law, but also under the Washington Principles of 1998 and its German equivalent, the "Gemeinsame Erklärung" of December 1999 – the German Federal Governments', the German Lander (Federal States)

and the German National Associations of Local Authorities' self-commitment declaration of December 1999, called the "Joint Declaration on the tracing and return of Nazi-confiscated art, especially Jewish property." ("Joint Declaration", *see* http://www.lostart.de/Webs/EN/Datenbank/Grundlagen/GemeinsameErklaerung.html, last visited May 10, 2016) – there is a need to determine the facts regarding events that took place over 80 years ago. Documents need to be interpreted by "state of the art" scholarship of the surrounding historical circumstances. This is only achievable through qualified experts, a practice that also is well-accepted under both U.S. and German law.

10. Nonetheless, the Advisory Commission did not incorporate the uncontested findings of these experts into the recommendation of March 20, 2014. This challenges the role and assistance they contributed to the process and demonstrates that the Advisory Commission failed to meet even the minimal requirements of international adopted principles of law. Ignoring the experts, from an otherwise detailed opinion, such as this one, leaves room for doubt as to the veracity and finality of the Advisory Commission's recommendations. It also leaves future claimants to wonder how claims are to be supported so that the Panel can reach reasoned and non-arbitrary results.

11. In the Motion, Defendants stated that "both sides presented extensive evidence and argument to the Commission." (Motion at p. 8, 36, 56) Actually, the Plaintiffs did not only present five expert opinions to the Commission, but discovered more documents

during the procedure after June 29, 2012, that evidence the conspiracy among high-ranking Nazis, in trying to get hold of the Welfenschatz collection:

12. Evidence shows that the Berlin Nazi-regime, towards the international press, stated the purchase price at 45% above what they paid the persecuted Jewish victims. The Nazis reported the price at $ 2,500,000 which is equivalent to RM 6.2 million. This was reported in the "Baltimore Sun" in October 1935, an article, discovered and made available to the Plaintiffs only in December 2013. If the price of 1935 had been fair, why would the Nazi government have gone to the trouble of inflating it? FAC at 179-180

13. Reichsmarschall Hermann Goering, notorious for his insatiable appetite for looting art, was the Prime Minister of Prussia at the time. The experts left no doubt as to his role based on documents from the Prussian Ministries. As soon as he had manipulated the deal, he *himself* gifted it to Hitler according to the "Baltimore Sun" newspaper, in October 1935. Thus, the evidence supports the expert finding that Goering acted and treated the collection as if it was his property to dispose of, including gifting, as he saw fit.

14. In this context, the Defendants repeatedly allege that they, on the one hand, "are committed to the Washington Principles and the Terezin Declaration" (Motion at p. 42, 68) and that SPK "was – and is – committed to adjudications on the merits of claims to Nazi-looted art" (Motion at p. 67), but, on the other hand, they declare that they will invoke the limitation defense

before that court (Motion at p. 68), in the attempt to prevent the case to be decided upon the merits and to deny Plaintiffs' day in court. These statements by the Defendants are not only highly contradictory, but a sham and the Defendants hereby make a joke of the international community's ongoing serious efforts to provide late justice to the victims of Nazi persecution when it comes to redress the historic wrongs of the Nazi era.

It is almost absurd that Germany, the country of the perpetrators, claims to have and to take a leading role in researching and resolving Nazi looted art matters "on the merits of claims", but, at the same time, is trying to hide behind the limitation defense.

15. Even worse, in almost the same breath the Defendants seriously maintain that if Plaintiffs had "brought their claim to a German court, or if they did so after this suit is dismissed, the defendants would not invoke the time-bar." (Motion at p. 54, 68) – a highly questionable and, at the same time, revealing statement by Defendants:

16. That – the waiver of the plea of statute of limitations and of the laches defense – is consistent with the German Joint Declaration and, as pointed out correctly by the Defendants, the Joint Declaration reaffirmed Germany's commitment to the Washington Principles and promised that Germany would redouble its efforts to ensure that "art that ha[s] been identified as Nazi-confiscated property and can be attributed to specific claimants [is] returned, upon individual examination,

to the legitimate former owners or their heirs." (Motion at p. 35)

17. With that in mind, the Defendants, SPK and Germany, can not and will not object that this declaration, as repeatedly argued by governmental, states' and local officials in public since 1999, has a binding effect on the public institutions which includes the waiver of limitation defenses. That means none other than Germany and SPK pleading limitation is not consistent with both the Washington Principles declaration, signed by Germany, and the German "Joint Declaration" of 1999, no matter the place and forum of jurisdiction.

In other words: Defendants are barred from pleading limitation before that court, because this is a serious breach of international and national commitment on the return of Holocaust era assets, of the German "Joint Declaration" in particular. Furthermore, if the Defendants invoke the limitations defense before that court, this would not only be an act of pure arbitrariness and ignorance of international and of German and U.S. principles of law, but contradicts their self-portrayal as allegedly being "committed to adjudications on the merits of claims to Nazi-looted art" (Motion at p. 67). In summary, Defendants, by using their line of argumentation regarding the matter of statute of limitations as presented by the Motion, are wrong and loose all credibility.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Marburg, May 10, 2016

/s/ Markus H. Stötzel

. . . . . .

Markus H. Stötzel, Rechtsanwalt

Freie Universität [SEAL] Berlin

Fachbereich Rechtswissenschaft
Lehrstuhl fur Bürgerliches Recht, Handels- und Gesellschaftsrecht, Internationales Privatrecht

Univ.-Prof. Dr.

Christian A r m b r ü s t e r

Richter am Kammergericht a.D.

Van't-Hoff-Str. 8
14195 Berlin, Germany
Phone +49 30 838-52167
Fax +49 30 838-452181
E-Mail c.armbruester@fu-berlin.de
Internet www.fu-berlin.de/jura

6 June 2016

Supplemental Expert Opinion of Prof. Dr. Christian ARMBRÜSTER

I. Assignment

1. I have been retained by counsel for the Defendants in connection with a case pending in the U.S. District Court for the District of Columbia, Philipp v. Fed. Rep. of Germany, No. 15-cv-00266. In this function I rendered an Expert Opinion dated 26 October 2015, an amended version of which is dated 4 March 2016 (referred to hereafter as "Armbrüster Opinion").

2. I have been asked to comment on the views expressed with regard to my own Expert Opinion in Chapters B and C of the Expert Opinion rendered by Prof. Dr. Stephan Meder dated 22

April 2016 (referred to hereafter as "Meder Opinion").

II. Summary of Sections B and C of the Meder Opinion

3. Sections B and C of the Meder Opinion contain four principal assertions: **(1)**

The Consortium is to be characterized as a mere "tendering consortium" (*Gelegenheitsgesellschaft*) without legal capacity. **(2)** The Consortium was not the owner of the Welfenschatz. **(3)** The Consortium ended upon concluding the execution of the sale in 1935. **(4)** The Plaintiffs have standing as they are associated by virtue of inheritance.

III. Summarized analysis of Sections B and C of the Meder Opinion

4 None of the four principal assertions of the Meder Opinion mentioned in N. 3 cast doubt on the findings in the Armbrüster Opinion: **(1)** The qualification of the Consortium as a "tendering consortium" or, in the terminology of the Armbrüster Opinion, "occasion partnership" (*Gelegenheitsgesellschaft*), is in line with the Armbrüster Opinion (see below N. 5). The question whether the Consortium has legal capacity depends on the retroactive effect of the *Bundesgerichtshof judgment* of 2001; however, this matter is not decisive for the questions at stake here (see N. 8). **(2)** Even if the Consortium was not the owner of the Welfenschatz, then the

members of the Consortium did not have individual (fractional) ownership, but they all owned the Welfenschatz jointly in co-ownership (see N. 9 f.). **(3)** The Consortium ended in 1935 but continued to exist for liquidation purposes when additional assets came to the surface, which creates a need for a supplementary liquidation (see N. 11 ff.). **(4)** The Plaintiffs cannot have inherited individual fractional shares in the Welfenschatz, as such shares did and do not exist. Instead, there is a need for a proper liquidation that involves all the successors of the Consortium members.

IV. Nature and legal capacity of the Consortium

5. The Meder Opinion (p. 4-14) lengthily explores why the Consortium is to be considered as an "occasion partnership" *(Gelegenheitsgesellschaft)* under German law.[1] This

[1] When the Meder Opinion (p. 13 s.) denies the relevance of the discussion on the applicable law offered in the Armbrüster Opinion (N. 20-24), it offers no statement at all about which conflict of law rules should then govern the law applicable on the Consortium. This is even more striking if one considers that the Meder Opinion (p. 4 ss.) does not hesitate to apply the German civil code (BGB) to the case. However, as both Opinions come to the conclusion that German law is applicable throughout, this topic need not be further explored.

Furthermore, the Meder Opinion (p. 13) argues that the citation of literature and legal precedent concerning capital corporation law in the Armbrüster Opinion was "rather inconsequential". The Meder Opinion obviously has overlooked what is laid down in N. 21 of the Armbrüster Opinion, where it is expressly stated that the *Reichsgericht,* being the highest civil court in the relevant

qualification is in line with the Armbrüster Opinion (N. 11-13). However, the Meder Opinion (p. 7) misleadingly claims that this kind of partnership is "frequently formed as internal corporations that are characterized by not participating in legal and business affairs and by waiving the formation of corporation assets". This is true only for so-called everyday "occasion partnerships", such as car pools or betting pools, but not for other kinds of "occasion partnerships", such as a joint venture between several building companies, as mentioned in the Armbrüster Opinion (N. 11) The quotation offered in the Meder Opinion (p. 7) as evidence of this assessment do not support his point. Thus, e.g. the statement by the author *K. Schmidt* expressly differentiates between everyday "occasion partnerships" and other kinds of "occasion partnerships", and he limits his statement, which is cited in the Meder Opinion without any differentiation, exclusively to the former. The additional reference to *Schäfer* is inaccurate as well, as that source does not deal at all with the question at issue.[2]

---

period, emphasized that the so-called seat theory reflects a general and universal principle.

[2] The Meder Opinion (p. 8) further mentions that German commercial law is not applicable to the Consortium. This is true, and it was pointed out in the Armbrüster Opinion (N. 10 ss.). When the Meder Opinion (p. 8) continues to state that in contrast to the Armbrüster Opinion (N. 14, 15) "it may therefore be open to interpretation whether the consortium members acted . . . as owners of the corporation J. Rosenbaum, personally, or on behalf of the art dealership", the Meder Opinion has clearly not recognized the relevance of that matter. It is self-evident that when

6. The Meder Opinion (p. 9 s.) assumes that the Consortium can "in total only be viewed as an internal corporation, but not as an external corporation". The distinction between both kinds of partnerships is relevant for the question of legal capacity (Armbrüster Opinion, n. 26). In addition the Meder Opinion (p. 7) claims that internal partnerships are characterized by "waiving the formation of corporation assets", which is not correct.[3] Meder's assumption that the Consortium was an internal partnership is definitely inaccurate as well. As was pointed out in the Armbrüster Opinion (n. 8), the three individuals who negotiated the 1929 agreement did so jointly as members of the Consortium. It is important to mention that the Meder Opinion (p. 11) itself in a later passage reads as follows: "The Consortium members instead acted as shareholders of the Consortium". This is the decisive fact that distinguishes an external partnership from an internal partnership.[4] It is therefore highly contradictory for the Meder Opinion to acknowledge that the members acted on behalf of the Consortium and at the same time to deny the existence of an external partnership.

---

dealings of a Consortium are to be assessed, as is the case here, the identity of the members of this Consortium needs to be clarified. This is not only true with regard to the legal transactions but also with regard to succession, and to the Plaintiffs' standing to assert claims belonging to the Consortium.

[3] MünchKomm/Schäfer, BGB, 6th ed. 2013, § 705 N. 280.

[4] MünchKomm/Schäfer (n. 3), § 705 N. 279.

7. The Meder Opinion (p. 10 s.) suggests that the reference to the shareholders as "Consortium" cannot be considered as a reference to the partnership. This assumption is inaccurate. As was demonstrated in the Armbrüster Opinion (N. 8, 13) both the 1929 and the 1935 agreements were concluded on behalf of the Consortium. Contrary to what the Meder Opinion (p. 11) assumes, this case is not at all comparable to a case where several individuals who sell an object are summarily referred to as "Sellers". In the latter case, the short name for all the individuals is just the plural of the word "seller", and this does not point to any different identity of the contracting party, which still consists of several individuals. In contrast, the Consortium is, as even the Meder Opinion (p. 8 ss.) concedes, a company (the Meder Opinion inaccurately speaks of a "corporation" but obviously means a partnership). The Meder Opinion (p. 11) further assumes that a partnership needs a "special name" in order to conduct transactions as an external partnership. This is not accurate, and the Meder Opinion fails to offer any evidence. The viewpoint taken in the Meder Opinion raises the question of how the members of the Consortium could have behaved differently in order to act on behalf of the Consortium. The answer is that there is no such different way; they did exactly what was needed in order to make clear that they wanted to act on behalf of the Consortium.[5]

---

[5] The Meder Opinion (p. 11) states that the empowerment of one member of the Consortium by the others does not mean that a special corporate officer is appointed as a representative. This

8. With regard to the question of legal capacity of the Consortium, the Meder Opinion (p. 15-21) expresses the view that this question has to be answered in a purely historical perspective. This is a view that may indeed be taken, even though there are clearly stronger reasons for the opposite position,[6] as demonstrated in the

---

is true, and it is, contrary to what the Meder Opinion (p. 11) assumes, not at all put into doubt in the Armbrüster Opinion (N. 13), but it is irrelevant here. Especially for an "occasion partnership" it is quite common that with regard to the small number of legal transactions that are to be performed, depending on the specific negotiating situation, an empowerment of one member with regard to a certain legal transaction takes place. Thus the standard commentary by Staudinger correctly states as follows: "As a matter of course, express powers of proxy are not affected by the interpretation rule of Sect. 714. The rule of Sect. 714 only applies supplementarily. If there are express powers of proxy these apply." (Staudinger/*Geiler*, BGB, 9th ed. 1929, § 714 N. 4 *(„Durch die Auslegungsregel des § 714 werden selbstverständlich ausdrückliche Vollmachtserteilungen nicht berührt. Die Vorschrift des § 714 greift nur ergänzend ein. Liegen ausdrückliche Bevollmächtigungen vor, so gelten diese.*")). In fact, under German law there is no need at all for the members of a partnership to generally modify the terms of representation, which are laid down in statutory law (Sect. 709 (1), 714 BGB), in the articles of association. They can rather agree to authorize one partner to act on behalf of the partnership in a specific transaction without any prejudice for further transactions, as would be the case when they agreed on a general deviation from the nonbinding statutory provisions mentioned above (MünchKomm/Schäfer (n. 3), § 705 N. 22.

[6] With regard to that position, the Meder Opinion (p. 21) also argues that the Armbrüster Opinion fails to mention the limited scope of application of the 2001 *Bundesgerichtshof* judgment on legal capacity of a partnership. In fact there is only one limitation of this judgment that matters in the Welfenschatz case, namely its inapplicability to a mere "internal company". This restriction is mentioned in the Armbrüster Opinion (N. 26), where its

Armbrüster Opinion (N. 26). However when the Meder Opinion (p. 16) states that the Armbrüster Opinion omitted the historical-perspective evaluation, this is obviously inaccurate. The Armbrüster Opinion (N. 27) dedicates an entire passage to exactly that question, where it is demonstrated that no individual member of the Consortium was able to dispose of a fractional property share, as no such shares but a joint ownership of all the Consortium members existed. It is striking that the Meder Opinion does not at all explore this topic, which is decisive for the qualification of the Consortium as well.

V. Ownership of the Welfenschatz

9. The Meder Opinion (p. 12) states that Saemy Rosenberg and Isaak Rosenbaum "were the solely authorized shareholders and therefore the sole owners" of the Welfenschatz. From this assumption the Meder Opinion (p. 12 s.) draws the conclusion that no contract was concluded on behalf of the partnership. This statement is inaccurate in several ways. First of all, as pointed out in the Armbrüster Opinion (N. 40), it cannot be ruled out that there were further members of the Consortium. In that case, those other individuals would have to be considered as owners as well, notwithstanding the fact that they were not "authorized" to act on behalf

---

irrelevance for the case is also demonstrated. The Meder Opinion (p. 21) does not demonstrate that any further limitations of the judgment may play a role here, which is not surprising as this is not the case.

of the Consortium. Second, the statement reveals a fundamental misunderstanding of German partnership law. As explored extensively in the Armbrüster Opinion (N. 8, 25 ss.), if one assumes that the partnership is governed by the view – commonly shared in the relevant period – that a partnership lacks legal capacity, then it is self-evident that the members of the partnership are the "sole owners". However, the decisive question for liquidation is whether they own the assets jointly or individually, i.e., fractionally. The Meder Opinion (p. 12) does not address that question in this context. Later, the Meder Opinion (p. 14) very vaguely deals with "a separate corporation and/or special fund", the formation of which it denies, rather than addressing the question why there should not be co-ownership, as assumed in Sect. 719 (1) BGB (see also below, N. 15). For all these reasons the Meder Opinion's conclusions are inaccurate.

10. The same gross mistake reappears in the Meder Opinion (p. 28) when it assumes that each member of the Consortium would have "sole ownership" of the Welfenschatz "proportional to his contribution ratio". Once again the Meder Opinion ignores the relevant statutory provision in Sect. 719 (1) BGB, which assumes that all members are co-owners of the partnership's assets. The Meder Opinion cites two sources in order to support its diverging statement. The first of these sources is the *Staudinger* commentary, where the Meder Opinion very imprecisely refers to about five pages where various types of atypical

partnerships[7] are mentioned, and to a further five pages which concern various types of consortiums[8]. Neither of these passages supports the view for which they are cited. The second source quoted in the Meder Opinion (p. 28) is a *Reichsgericht* judgment from 1906[9]. This case is atypical in the decisive point, as there was a written partnership agreement, in which the individual partners were to acquire ownership of a number of bonds that corresponded to their share in the partnership. Thus the partners were able to avoid a transfer from the partnership to themselves, which would have incurred stamp tax. There is no evidence at all that the members of the Welfenschatz Consortium had concluded a similar agreement. To the contrary, it is fair to assume that their common interest was in line with what, in Sect. 719 (1) BGB, the legislature deems appropriate for a partnership, which is co-ownership rather than fractional or total individual ownership of the assets that are acquired for the purposes of the partnership. The fact that there was such co-ownership is true for the period before liquidation (Armbrüster Opinion N. 27) as well as for the liquidation itself (Armbrüster Opinion N. 35). The speculations made in the Meder Opinion (p. 27 f.) on which kind of property ownership might have been negotiated are entirely futile. This is because in the absence of any evidence for a specific agreement between the members of the

---

[7] Staudinger/*Geiler* (n. 5), Anhang zum 14. Titel, A.

[8] Staudinger/*Geiler* (n. 5), Anhang zum 14. Titel, B II 1,

[9] RG BankArchiv vol. 5 p. 230 f.

Consortium on the matter of ownership, the general rule of co-ownership, which is laid down in Sect. 719 (1) BGB, and which the Meder Opinion (p. 27 f.) fails to mention in this context, applies.

VI. Continuing existence of the Consortium for liquidation purposes

11. While the Meder Opinion (p. 22 ss.) is in line with the Armbrüster Opinion (N. 31) with regard to the fact that the Consortium had legally come to an end in 1935, the conclusion that afterwards "corporation assets" can no longer exist is inaccurate. The Meder Opinion obviously ignores the fact that once assets that were not included in the liquidation procedure turn up later, the partnership continues to exist for the purpose of its entire liquidation. This is an undisputed fact (see Armbrüster Declaration N. 32, 34 ss.). If the Meder Opinion's assertions were accurate, there would never be such a procedure as a supplementary liquidation (*Nachtragsliquidation*). In reality the continuing existence of a partnership in such cases has been acknowledged (see references in the Armbrüster Declaration N. 30). It remains unclear why the Meder Opinion does not take notice of this fact.[10] The references quoted in

[10] The Meder Opinion (p. 30 f.) argues that the *Bundesgerichtshof* case cited in the Armbrüster Opinion (N. 34 footnote 31) was irrelevant as it concerned an *OHG*. As expressly stated in the Armbrüster Opinion, this case indeed concerns an *OHG*, and the Armbrüster Opinion (N. 36) demonstrates that the same rules apply to a *GbR*. This is also confirmed in the leading *Staudinger* commentary, which is cited in the Armbrüster

the Meder Opinion (P. 24), including the *Bundesgerichtshof* case from 1999, do not deal with the situation of supplementary liquidation that is at stake here, and are therefore useless.

12. The Meder Opinion (p. 28) assumes that a follow-up liquidation is "neither required nor expected" in this context. The Meder Opinion fails to properly address the comprehensive analysis which was developed on this matter in the Armbrüster Opinion (N. 34-41). In particular, the Meder Opinion (p. 30) is inaccurate in stating that the 1905 *Reichsgericht* decision cited in the Armbrüster Opinion (N. 34 footnote 30) is "not relevant". The *Reichsgericht* rather confirms the general rule that a partnership continues to exist as long as necessary for its liquidation. In the 1905 case, an exception was made only because of very special circumstances, which were that (1) all partners but one had already agreed on the distribution of the assets, (2) they claimed their share only from the remaining partner, and (3) there was no reason at all why the partnership should continue to exist for liquidation purposes. In the Welfenschatz case the situation is quite different: The litigation does not take place amongst former members of the partnership, but it is aimed at liquidating assets that would later have to be distributed amongst them. This means that in contrast to the *Reichsgericht* case, the liquidation procedure with regard to the remaining (alleged) asset has only just started and is by no means finished

---

Opinion (N. 34 footnote 31), and which the Meder Opinion fails to take notice of.

yet. When the Meder Opinion (p. 30) argues that the *Reichsgericht* case is different, this is exactly the point why it is cited in the Armbrüster Opinion (N. 34 footnote 30) with the addition "see further"; that case, in which the *Reichsgericht* made an exception, and did not consider a supplementary liquidation necessary, confirms the general rule that is relevant here.

13. In addition, it is not clear whether the plaintiffs have standing to assert claims belonging to the Consortium at all (see also N. 15). This is demonstrated in the Armbrüster Opinion (N. 34-41) in detail. In such a situation, it is essential to follow the legal rules on a proper and transparent liquidation in order to protect any further members of the Consortium or their heirs from suffering damage caused by an uncoordinated action brought forward by certain individuals.

VII. Standing of the Plaintiffs to assert claims belonging to the Consortium

14. Finally, the Meder Opinion (p. 32) mentions that the heirs were associated by virtue of inheritance. However, the *Reichsgericht* case cited as proof of this statement concerns an entirely different case. In that case, the defendants had never inherited any shares in a partnership, but simply a piece of land, which they then developed in order to achieve a higher sales price. In contrast, the plaintiffs in the present case claim that they are heirs to or "authorized agents in fact" (First Amended Complaint, N.

20) for the heirs to the former members of the Consortium. As demonstrated in the Armbrüster Opinion (N. 40), under German law they would need to prove these allegations. But even if they could do so, this would change nothing with regard to the need for a proper liquidation procedure, as provided in Sect. 146 (1) HGB, and as demonstrated in the Armbrüster Opinion (N. 34-41).

15. The Meder Opinion (p. 26) claims that there is no evidence on the face of the complaint that the Consortium had involved foreign and domestic business associates and that those associates consequently had further rights such as property rights. This is correct. However, as the Armbrüster Opinion (N. 40) points out, it is equally correct that the existence of further non-managing partners of the Consortium beyond the art dealers' firms can by no means be ruled out, which the Meder Opinion (p. 26) obviously tries to suggest.

VIII. Conclusions

16. The Meder Opinion suffers from a fundamental misperception, as it considers the Consortium as a mere group of individuals and thus as an "internal partnership". This is clearly incompatible with the fact that in all the relevant transactions the Consortium appeared and acted as a proper party to the respective agreements, which makes it an "external partnership".

17. Therefore the Welfenschatz collection was acquired by the Consortium as such, or, if one prefers to apply the predominant view before 2001, at least by all the Consortium members in co-ownership. It would clearly be against the interest of all the members and their common interest to assume fractional ownership by each member individually, which Sect. 719 (1) BGB therefore prevents.

18. As demonstrated, none of the statements made and none of the references cited in the Meder Opinion put the conclusions of the Armbrüster Opinion into doubt. The findings of that latter Opinion therefore remain relevant for the assessment of this case.

Berlin, 6 June 2016

/s/ Armbrüster
Prof. Dr. Christian Armbrüster

Urkundenrolle Nr. R25/2016

der Notarin Ingeborg Rakete-Dombek,
Bayerischer Platz I, 10779 Berlin

Die umseitige, vor mir vollzogene Unterschrift

des Herrn Prof. Dr. Christian Armbrüster,
geboren am 15.05.1964,
wohnhaft Kufsteiner Straße 12, 10825 Berlin,

der Notarin von Person bekannt,

beglaubige ich.

Notarin befragte den Erschienenen, ob die Notarin oder eine der mit ihr in beruflicher Zusa [illegible] arbeit verbundenen Personen in der Angelegenheit,

die Gegenstand der vorstehenden Beglaubigurig außerhalb ihres Notaramtes tätig war oder ist. Der Erschienene verneinte die Frage.

Berlin, den 06.06.2016

/s/ J. Rakete-Dombek
Rakete-Dombek
Notarin

Kostenberechnung gem. § 19 GNotKG
Geschäftswert: 170.000,00 € (§ 121 GNotKG)

Nr. 25100 KV Unterschriftsbeglaubigung	
Höchstgebühr	70,00 €
Nr. 32014 KV (19% Mehrwertsteuer)	13,30 €
	83,30 €

/s/ J. Rakete-Dombek
Rakete-Dombek
Notarin