

No. 20-1566

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IN THE  
**Supreme Court of the United States**

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DAVID CASSIRER, *et al.*,

*Petitioners,*

*v.*

THYSSEN-BORNEMISZA COLLECTION  
FOUNDATION,

*Respondent.*

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ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE NINTH CIRCUIT

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**JOINT APPENDIX**

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PETITION FOR CERTIORARI FILED MAY 6, 2021  
CERTIORARI GRANTED SEPTEMBER 30, 2021

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**TABLE OF APPENDICES**

	<i>Page</i>
APPENDIX A — RELEVANT DOCKET ENTRIES .....	1a
APPENDIX B — TRIAL EXHIBIT 10 .....	43a
APPENDIX C — TRIAL EXHIBIT 36 .....	44a
APPENDIX D — TRIAL EXHIBIT 42 .....	45a
APPENDIX E — TRIAL EXHIBIT 62 .....	46a
APPENDIX F — TRIAL EXHIBIT 65 .....	50a
APPENDIX G — TRIAL EXHIBIT 72 .....	51a
APPENDIX H — TRIAL EXHIBIT 348 .....	54a
APPENDIX I — DIRECT EXAMINATION DECLARATION OF DANIEL PETROPOULOS IN THE UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION, FILED NOVEMBER 20, 2018 .....	63a

The following decision(s), opinion(s) and order(s) have been omitted in printing this Joint Appendix because they appear in the appendix of the Petition for a Writ of Certiorari on the following pages:

*Table of Appendices*

	<i>Page</i>
APPENDIX A – OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED AUGUST 17, 2020	
APPENDIX B – OPINION OF THE UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA, FILED APRIL 30, 2019	
APPENDIX C – OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, DATED JULY 10, 2017	
APPENDIX D – OPINION OF THE UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA, FILED JUNE 4, 2015	
APPENDIX E – DENIAL OF REHEARING OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED DECEMBER 7, 2020	
APPENDIX F – RELEVANT STATUTORY PROVISIONS – FOREIGN SOVEREIGN IMMUNITIES ACT, 28 U.S.C. §§ 1602–1605, 1606	

**APPENDIX A — RELEVANT DOCKET ENTRIES**

**RELEVANT DOCKET ENTRIES FROM THE  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT  
CASE #: 19-55616**

<b>Date Filed</b>	<b>#</b>	<b>Docket Text</b>
05/29/2019	<u>1</u>	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL.
***		
10/07/2019	<u>10</u>	Submitted (ECF) Opening Brief for review. Submitted by Appellants David Cassirer, The Estate of Ava Cassirer and United Jewish Federation of San Diego County.
***		
10/14/2019	<u>13</u>	Submitted (ECF) Amicus brief for review and filed Motion to become amicus curiae. Submitted by COMUNIDAD JUDIA DE MADRID AND FEDERACION DE COMUNIDADES JUDIAS DE ESPANA.

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*Appendix A*

01/15/2020 29 Submitted (ECF) Amicus brief for review and filed Motion to become amicus curiae. Submitted by Kingdom of Spain.

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01/30/2020 34 Submitted (ECF) Answering Brief for review. Submitted by Appellee Thyssen-Bornemisza Collection Foundation.

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02/28/2020 46 Submitted (ECF) Reply Brief for review. Submitted by Appellants David Cassirer, The Estate of Ava Cassirer and United Jewish Federation of San Diego County.

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07/07/2020 60 ARGUED AND SUBMITTED TO CONSUELO M. CALLAHAN, CARLOS T. BEA and SANDRA S. IKUTA.

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*Appendix A*

08/17/2020 62 FILED MEMORANDUM  
DISPOSITION (CONSUELO M.  
CALLAHAN, CARLOS T. BEA and  
SANDRA S. IKUTA) AFFIRMED.  
FILED AND ENTERED  
JUDGMENT.

\*\*\*

09/30/2020 67 Filed (ECF) Appellants David  
Cassirer, The Estate of Ava Cassirer  
and United Jewish Federation of  
San Diego County petition for panel  
rehearing and petition for rehearing en  
banc (from 08/17/2020 memorandum).

10/12/2020 68 Submitted (ECF) Amicus brief  
for review and filed Motion to  
become amicus curiae. Submitted  
by Comunidad Judia de Madrid and  
Federacion de Comunidades Judias de  
Espana.

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12/07/2020 71 Filed order (CONSUELO M.  
CALLAHAN, CARLOS T. BEA and  
SANDRA S. IKUTA): The panel has  
unanimously voted to deny the petition  
for panel rehearing and rehearing en  
banc. The full court has been advised  
of the petition for rehearing en banc

4a

*Appendix A*

and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35. Accordingly, the petition for panel rehearing and rehearing en banc (Dkt No. [67]) is DENIED. [11916485]

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09/30/2021 74 Supreme Court Case Info Case number:  
20-1566 Filed on: 05/06/2021 Cert  
Petition Action 1: Granted, 09/30/2021

*Appendix A*

**RELEVANT DOCKET ENTRIES FROM THE  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT  
CASE #: 15-55550, 15-55951, 15-55977**

<b>Date Filed</b>	<b>#</b>	<b>Docket Text</b>
04/10/2015	<u>1</u>	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL.
		***
06/25/2015	<u>7</u>	Filed (ECF) Appellees David Cassirer, Ava Cassirer and United Jewish Federation of San Diego County Motion to consolidate cases 15-55550 and 15-55951.
		***
08/13/2015	<u>12</u>	Filed order (Appellate Commissioner): The unopposed motion to consolidate these appeals is granted. Appeal Nos. 15-55550, 15-55951 and 15-55977 are consolidated. The previous panel has declined to take these appeals as a comeback. The motion to have these appeals heard by the prior panel is denied. Plaintiffs-appellees' motion to dismiss appeal Nos. 15-55550 and 15-55977 for lack of jurisdiction is



*Appendix A*

denied without prejudice to renewing the arguments in the briefs. See Nat'l Indus. v. Republic Nat'l Life Ins. Co., 677 F.2d 1258, 1262 (9th Cir. 1982) (stating that merits panel may consider appellate jurisdiction despite earlier denial of motion to dismiss). The motion to expedite the hearing of this appeal is granted.

\*\*\*

01/19/2016    23    Submitted (ECF) First Brief on Cross-Appeal for review. Submitted by Appellees Ava Cassirer, David Cassirer and United Jewish Federation of San Diego County in 15-55550, Appellants Ava Cassirer, David Cassirer and United Jewish Federation of San Diego County in 15-55951, 15-55977.

\*\*\*

01/20/2016    26    Submitted (ECF) Amicus brief for review and filed Motion to become amicus curiae. Submitted by Bet Tzedek Legal Services.

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*Appendix A*

01/25/2016 28 Submitted (ECF) Amicus brief for review and filed Motion to become amicus curiae. Submitted by The 1939 Society.

01/25/2016 29 Submitted (ECF) Amicus brief for review and filed Motion to become amicus curiae. Submitted by Comunidad Judia de Madrid and Federacion de Comunidades Judias de Espana.

\*\*\*

01/26/2016 36 Submitted (ECF) Amicus brief for review (by government or with consent per FRAP 29(a)). Submitted by State of California.

01/26/2016 37 Submitted (ECF) Amicus brief for review and filed Motion to become amicus curiae. Submitted by The Commission for Art Recovery. ]

01/26/2016 38 Submitted (ECF) Amicus brief for review and filed Motion to become amicus curiae. Submitted by JOSE LUIS DE CASTRO.

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*Appendix A*

04/11/2016    77    Submitted (ECF) Second Brief on Cross-Appeal for review. Submitted by Appellant Thyssen-Bornemisza Collection Foundation in 15-55550, Appellee Thyssen-Bornemisza Collection Foundation in 15-55951, 15-55977.

\*\*\*

06/16/2016    90    Submitted (ECF) Third Brief on Cross-Appeal for review. Submitted by Appellees Ava Cassirer, David Cassirer and United Jewish Federation of San Diego County in 15-55550, Appellants Ava Cassirer, David Cassirer and United Jewish Federation of San Diego County in 15-55951, 15-55977.

\*\*\*

07/14/2016    99    Submitted (ECF) Cross-Appeal Reply Brief for review. Submitted by Appellant Thyssen-Bornemisza Collection Foundation in 15-55550, 15-55977. Date of service: 07/14/2016. [10050431] [15-55550, 15-55951, 15-55977]--

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*Appendix A*

12/05/2016 117 ARGUED AND SUBMITTED TO CONSUELO M. CALLAHAN, CARLOS T. BEA and SANDRA S. IKUTA.

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07/10/2017 127 FILED OPINION (CONSUELO M. CALLAHAN, CARLOS T. BEA and SANDRA S. IKUTA) REVERSED AND REMANDED. Judge: CTB Authoring, FILED AND ENTERED JUDGMENT.

\*\*\*

09/07/2017 136 Filed (ECF) Appellant Thyssen-Bornemisza Collection Foundation in 15-55550, Appellee Thyssen-Bornemisza Collection Foundation in 15-55951 petition for panel rehearing and petition for rehearing en banc (from 07/10/2017 opinion).

\*\*\*

09/18/2017 138 Submitted (ECF) Amicus brief for review and filed Motion to become amicus curiae. Submitted by Kingdom of Spain.

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*Appendix A*

09/27/2017    141    Filed order (CONSUELO M. CALLAHAN, CARLOS T. BEA and SANDRA S. IKUTA) Plaintiffs-Appellees are directed to file a response to Defendant-Appellant's Petition for Rehearing or Rehearing En Banc, filed on September 7, 2017.

\*\*\*

11/01/2017    144    Filed (ECF) Appellees Ava Cassirer, David Cassirer and United Jewish Federation of San Diego County in 15-55550, Appellants Ava Cassirer, David Cassirer and United Jewish Federation of San Diego County in 15-55951, 15-55977 response to Combo PFR Panel and En Banc (ECF Filing), Combo PFR Panel and En Banc (ECF Filing) for panel and en banc rehearing, for panel and en banc rehearing (statistical entry).

11/08/2017    145    Submitted (ECF) Amicus brief for review and filed Motion to become amicus curiae. Submitted by "Comunidad Judia de Madrid" and "Federacion de Comunidades Judias de Espana".

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*Appendix A*

12/05/2017 150 Filed order (CONSUELO M. CALLAHAN, CARLOS T. BEA and SANDRA S. IKUTA) The panel has voted to deny Defendant-Appellant's petition for panel rehearing. The panel has also voted to deny Defendant-Appellant's petition for rehearing en banc. The full court has been advised of the petition for rehearing en banc and no judge of the court has requested a vote on en banc rehearing.

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05/16/2018 157 Supreme Court Case Info Case number: 17-1245 Filed on: 03/05/2018 Cert Petition Action 1: Denied, 05/14/2018

12a

*Appendix A*

**RELEVANT DOCKET ENTRIES FROM THE  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT  
CASE #: 12-56159**

<b>Date Filed</b>	<b>#</b>	<b>Docket Text</b>
06/22/2012	<u>1</u>	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL.
		***
12/17/2012	14	Submitted (ECF) Opening brief for review. Submitted by Appellants Ava Cassirer, David Cassirer and United Jewish Federation of San Diego County. Date of service: 12/17/2012. [8441684] (Dunwoody, Stuart) [Entered: 12/17/2012 11:06 AM]
		***
12/21/2012	<u>18</u>	Submitted (ECF) Amicus brief for review (by government or with consent per FRAP 29(a)). Submitted by State of California.

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*Appendix A*

02/20/2013    24    Submitted (ECF) Answering Brief and supplemental excerpts of record for review. Submitted by Appellee Thyssen-Bornemisza Collection Foundation.

\*\*\*

02/27/2013    30    Submitted (ECF) Amicus brief for review (by government or with consent per FRAP 29(a)). Submitted by Brief of Amicus Curiae California Association of Museums in Support of Defendant-Appellee Thyssen-Bornemisza Collection Foundation and Supporting Affirmance.

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04/05/2013    34    Submitted (ECF) Reply Brief for review. Submitted by Appellants Ava Cassirer, David Cassirer and United Jewish Federation of San Diego County.

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12/09/2013    49    FILED OPINION (HARRY PREGERSON, DOROTHY W. NELSON and KIM MCLANE WARDLAW) AFFIRMED IN PART, REVERSED IN PART AND REMANDED.



*Appendix A*

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- 01/17/2014 52 Filed (ECF) Appellee Thyssen-Bornemisza Collection Foundation petition for rehearing en banc (from 12/09/2013 opinion).
- 02/11/2014 53 Filed order (HARRY PREGERSON, DOROTHY W. NELSON and KIM MCLANE WARDLAW) The panel has voted to deny the petition for rehearing en banc. Judges Pregerson and Wardlaw have voted to deny the petition, and Judge D.W. Nelson so recommends. The full court was advised of the petition for rehearing en banc. No judge requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35. The petition for rehearing en banc is DENIED. No further petitions will be entertained.

*Appendix A*

**RELEVANT DOCKET ENTRIES FROM THE  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT  
CASE #: 06-56325, 06-56406**

<b>Date Filed</b>	<b>#</b>	<b>Docket Text</b>
09/22/2006	<u>1</u>	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL.  ***
10/12/2006	<u>6</u>	Filed Claude Cassirer motion to expedite appeal. [06-56325] served on 10/11/06  ***
10/27/2006	<u>13</u>	Filed order REVISED ORDER. Aple's mtn to expedite is granted. Upon compl of the br sched this appl shall be calendared as soon as practicable. The br sched est in 06-56406 shall govern these consol cases. 06-56325 and 06-56406 are sua sponte consolidated. [06-56325, 06-56406]  ***

*Appendix A*

02/02/2006 18 Filed original and 15 copies Appellant Thyssen-Bornemisza opening brief ( Informal: n ) 55 pages and five copies of JOINT excerpts of record in 1volumes

02/05/2007 19 Filed original and 15 copies Appellant Kingdom of Spain in 06-56406 opening brief ( Informal: NO) 28 pages

\*\*\*

03/06/2007 24 Filed original and 15 copies appellee Claude Cassirer 62 pages brief, 5 suppl Exc. n 5 vols:

03/06/2007 26 Filed Appellee Claude Cassirer motion to dismiss the case for lack of applt jurisdiction

\*\*\*

03/19/2007 29 Filed original and 15 copies Thyssen-Bornemisza reply brief, ( Informal: n ) 16 pages

03/21/2007 30 Filed original and 15 copies Kingdom of Spain reply brief, ( Informal: n ) 8 pages

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*Appendix A*

09/24/2007 46 ARGUED AND SUBMITTED TO Thomas G. NELSON, Sandra S. IKUTA, N. R. SMITH [06-56325, 06-56406]

\*\*\*

01/05/2009 53 Filed order (THOMAS G. NELSON, SANDRA S. IKUTA and N. RANDY SMITH) Appellee's motion to file a supplemental brief is GRANTED. The parties are directed to file simultaneous, supplemental briefs addressing the question of what effect the en banc opinion in Sarei v. Rio Tinto, PLC, No. 02-56265, filed on December 16, 2008, has on this case.

\*\*\*

09/08/2009 62 FILED OPINION (THOMAS G. NELSON, SANDRA S. IKUTA and N. RANDY SMITH) AFFIRMED IN PART, REVERSED IN PART AND REMANDED.

10/06/2009 63 Filed order (THOMAS G. NELSON, SANDRA S. IKUTA and N. RANDY SMITH) Both Plaintiff-Appellee and Defendant-Appellant are hereby directed to file simultaneous responses on whether this matter should be reheard en banc within 21 days. \*\*\*

*Appendix A*

12/30/2009 68 Filed En Banc Order for PUBLICATION (ALEX KOZINSKI) [7179868] [06-56325, 06-56406] Upon the vote of a majority of nonrecused active judges, it is ordered that this case be reheard en banc pursuant to Circuit Rule 35-3. The three-judge panel opinion shall not be cited as precedent by or to any court of the Ninth Circuit.

\*\*\*

08/12/2010 80 FILED EN BANC OPINION (ALEX KOZINSKI, PAMELA ANN RYMER, ANDREW J. KLEINFELD, SIDNEY R. THOMAS, BARRY G. SILVERMAN, WILLIAM A. FLETCHER, RONALD M. GOULD, RICHARD A. PAEZ, CONSUELO M. CALLAHAN, CARLOS T. BEA and N. RANDY SMITH) DISMISSED IN PART; AFFIRMED IN PART. Judge: PAR Authoring, Judge: RMG Dissenting, FILED AND ENTERED JUDGMENT.

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10/06/2010 91 Filed order (ALEX KOZINSKI, PAMELA ANN RYMER, ANDREW J. KLEINFELD, SIDNEY R. THOMAS, BARRY G. SILVERMAN, WILLIAM A. FLETCHER,

*Appendix A*

RONALD M. GOULD, RICHARD A. PAEZ, CONSUELO M. CALLAHAN, CARLOS T. BEA and N. RANDY SMITH) The court has received a suggestion on the record of the death of Claude Cassirer. In light of the suggestion, we request the parties, and counsel for Cassirer, to provide a statement within 20 days on the effect, if any, of Cassirer's death on the proceedings in this court; whether the court should expect a request for substitution, and if so, when; and what further proceedings, if any, might be appropriate. Fed. Rule App. P. 43.

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12/17/2010    96    Received notice from the Supreme Court: petition for certiorari filed on 12/14/2010. Supreme Court Number 10-786.

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06/28/2011    98    The petition for writ of certiorari was denied on 06/27/2011. Supreme Court number 10-786. (**Panel: AK, PAR, AJK, SRT, BGS, WAF, RMG, RAP, CMC, CTB and NRS**).

*Appendix A*

**RELEVANT DOCKET ENTRIES FROM THE  
UNITED STATES DISTRICT COURT CENTRAL  
DISTRICT OF CALIFORNIA  
(WESTERN DIVISION - LOS ANGELES)  
CIVIL DOCKET FOR  
CASE #: 2:05-CV-03459-JFW-E**

<b>Date Filed</b>	<b>#</b>	<b>Docket Text</b>
05/10/2005	<u>1</u>	COMPLAINT against defendants Spain Kingdom of, Thyssen-Bornemisza Collection Foundation.(Filing fee \$ 250), filed by plaintiff Claude Cassirer. (rrey, ) (aco).
***		
02/28/2006	<u>13</u>	NOTICE OF MOTION AND MOTION to Dismiss filed by defendant Thyssen-Bornemisza Collection Foundation. Motion set for hearing on 5/22/2006 at 09:30 AM before Judge Gary A. Feess.
***		
06/09/2006	<u>42</u>	NOTICE OF MOTION AND MOTION to Dismiss Complaint filed by defendant Kingdom of Spain.

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*Appendix A*

07/11/2006 46 OPPOSITION to defendant Thyssen-Bornemisza Collection Foundations MOTION to Dismiss 13 filed by plaintiff Claude Cassirer.

07/11/2006 47 OPPOSITION to defendant Kingdom of Spain MOTION to Dismiss 42 filed by plaintiff Claude Cassirer.

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07/28/2006 55 REPLY in further support of MOTION to Dismiss 42 filed by defendant Spain Kingdom of.

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07/28/2006 57 DEFENDANT THYSSEN-BORNEMISZA COLLECTION FOUNDATION'S REPLY in support of MOTION to Dismiss 13 filed by Defendant Thyssen-Bornemisza Collection Foundation.

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08/30/2006 61 MEMORANDUM AND ORDER denying defendant Thyssen-Bornemisza Collection Foundations MOTION to Dismiss 13 and denying defendants Kingdom of Spains MOTION to Dismiss 42 ; given the



*Appendix A*

controlling questions of law presented for which there is substantial ground for difference of opinion, this order is hereby certified for appeal pursuant to 28 USC 1292(b) by Judge Gary A. Feess

09/14/2006 65 NOTICE OF APPEAL / REPRESENTATION STATEMENT to 9th CCA filed by Defendants Thyssen-Bornemisza Collection Foundation; all prior rulings and orders upon which that order rests. Appeal of Order, Filed On: 4/27/06; Entered On: 5/01/06; 37 , Memorandum & Opinion, 61 Filed On: 8/30/06; Entered On: 8/30/06;

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09/15/2006 64 STIPULATION AND ORDER FOR STAY OF PROCEEDINGS PENDING APPEAL AND PERPETUATION OF DEPOSITION OF PLAINTIFF at a mutually agreeable date before 1/1/07 in San Diego, to be recorded by stenographic and sound and audio means subject to discovery of plaintiff in connection with that deposition by Judge Gary A. Feess

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*Appendix A*

09/28/2006 68 NOTICE OF APPEAL to 9th CCA filed by defendants Spain Kingdom of. Appeal of In Chambers Order/Directive - no proceeding held,, Link Motions to Minutes,, Link Non-Motion Documents to Minutes,, 37 , Memorandum & Opinion, 61

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12/30/2009 103 ORDER from 9th CCA filed re: Notice of Appeal to 9th Circuit Court of Appeals,, 65 filed by Thyssen-Bornemisza Collection Foundation, Notice of Appeal to 9th Circuit Court of Appeals, 68 filed by Spain Kingdom of, CCA # 06-56325, 06-56406. Order received in this district on 12/30/09. Upon the vote of a majority of nonrecused active judges, it is ordered that this case be reheard en banc pursuant to Circuit Rule 35-3. The three-judge panel opinion shall not be cited as precedent by or to any court of the Ninth Circuit.

\*\*\*

10/06/2010 109 ORDER from 9th CCA filed re: Notice of Appeal to 9th Circuit Court of Appeals,, 65 filed by Thyssen-Bornemisza Collection Foundation,

*Appendix A*

Notice of Appeal to 9th Circuit Court of Appeals, 68 filed by Spain Kingdom of, CCA # 06-56325. The Order is The court hs received a suggestion on the record of the death of Clause Cassire. In light of the suggestion, we request the parties, and counsel for Cassirer, to provide a statement within 20 days on the effect, if any, of Cassirer's death on the proceedings in this court; whether the court should expect a request for substitution, and if so, when; and what further proceedings, if any, might be appropriate. Fed. Rule App.P.43.

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- 10/29/2010    111    ORDER from 9th CCA filed re: Notice of Appeal to 9th Circuit Court of Appeals 65 filed by Thyssen-Bornemisza Collection Foundation and Notice of Appeal to 9th Circuit Court of Appeals 68 filed by The Kingdom of Spain CCA # 06-56325 and 06-56406. Appellant's motion to stay issuance of mandate pending petition for a writ of certiorari is granted.
- 07/06/2011    113    MANDATE of 9th CCA filed re: Notice of Appeal to 9th Circuit Court of Appeals,, 65 , Notice of Appeal to 9th Circuit Court of Appeals, 68 , CCA # 06-56325, 06-56406.The Appeal

25a

*Appendix A*

is DISMISSED. We AFFIRMED the District Court's Order denying motions by Spain and the Foundation to dismiss for lack of subject matter jurisdiction. Mandate received in this district on 7/6/11.

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08/10/2011 118 STIPULATION to Dismiss Defendant Spain Kingdom of filed by Defendant Thyssen-Bornemisza Collection Foundation.

08/12/2011 119 ORDER GRANTING DISMISSAL OF DEFENDANT, KINGDOM OF SPAIN by Judge Gary A. Feess,, Spain Kingdom of terminated.

\*\*\*

09/08/2011 122 NOTICE OF MOTION AND MOTION to Dismiss Case filed by Defendant Thyssen-Bornemisza Collection Foundation.

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10/12/2011 127 AGREED ORDER REGARDING SUBSTITUTION OF PLAINTIFF AND CHANGE OF CAPTION by Judge Gary A. Feess,

*Appendix A*

10/17/2011    128    OPPOSITION to MOTION to Dismiss Case 122 Opposition to Thyssen-Bornemisza Foundation's Motion to Dismiss - filed by David Cassirer, filed by Plaintiffs Ava Cassirer, United Jewish Federation of San Diego County.

\*\*\*

11/07/2011    133    REPLY In Support of Motion to Dismiss MOTION to Dismiss Case 122 filed by Defendant Thyssen-Bornemisza Collection Foundation.

\*\*\*

12/16/2011    136    SUPPLEMENT to MOTION to Dismiss Case 122 Plaintiffs' Supplemental Briefing Regarding Foreign Affairs Preemption filed by Plaintiffs Ava Cassirer, David Cassirer, United Jewish Federation of San Diego County.

12/16/2011    137    SUPPLEMENT to MOTION to Dismiss Case 122 Thyssen Bornemisza Collection Foundation's Response to Order Re: Request for Further Briefing filed by Defendant Thyssen-Bornemisza Collection Foundation.

27a

*Appendix A*

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05/24/2012 159 MEMORANDUM AND ORDER REGARDING DEFENDANT'S MOTION TO DISMISS by Judge Gary A. Feess: The Foundation's motion to dismiss is GRANTED on the basis of foreign affairs preemption. The dismissal is ordered WITH PREJUDICE and WITHOUT LEAVE TO AMEND.

\*\*\*

7/17/2012 169 MINUTES (IN CHAMBERS): ORDER RE: PLAINTIFFS' MOTION FOR RECONSIDERATION by Judge Gary A. Feess: Plaintiffs' motion for reconsideration is DENIED 161 Motion to Alter Judgment; denying 164 Motion to Alter Judgment

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07/23/2012 171 First AMENDED NOTICE OF APPEAL to 9th CIRCUIT filed by Plaintiffs Ava Cassirer, David Cassirer, United Jewish Federation of San Diego County. Amending Notice of Appeal to 9th Circuit Court of Appeals, 165

*Appendix A*

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02/11/2014    174    ORDER from 9th CCA filed re: Notice of Appeal to 9th Circuit Court of Appeals 165 filed by United Jewish Federation of San Diego County, Ava Cassirer, David Cassirer, CCA # 12-56159. The panel has voted to deny the petition for rehearing en banc. Judges Pregerson and Wardlaw have voted to deny the petition, and Judge D.W. Nelson sorecommends. The full court was advised of the petition for rehearing en banc. No judge requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35. The petition for rehearing en banc is DENIED. No further petitions will be entertained. )

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05/09/2014    177    MANDATE of 9th CCA filed re: Notice of Appeal to 9th Circuit Court of Appeals 165 , CCA # 12-56159. The judgment of the District Court is is affirmed in part; reversed in part; remanded for further proceedings consistent with this opinion.

\*\*\*

12/02/2014    211    ORDER OF THE CHIEF JUDGE (# 14-077) approved by Chief Judge George H. King. Pursuant to the

*Appendix A*

recommended procedure adopted by the Court for the RETIREMENT of Judge Gary A. Feess and with the concurrence of the Case Management and Assignment Committee, this case is transferred from Judge Gary A. Feess to the calendar of Judge John F. Walter for all further proceedings.

\*\*\*

01/14/2015 221 (IN CHAMBERS): ORDER GRANTING DEFENDANT THYSSEN-BRONEMISZA COLLECTION FOUNDATION'S MOTION FOR LEAVE TO FILE AN AMENDED ANSWER 215 by Judge John F. Walter: The Court concludes that leave to amend should be granted. Contrary to Plaintiffs' argument, Judge Feess and the Ninth Circuit have not yet determined that the German Federal Court of Justice's decision in *Sachs v. Deutsches Historisches Museum*, BGH Mar. 16, 2012, V ZR 279/10 (Ger.) is dispositive of certain of Defendants affirmative defenses. The Court concludes that this issue is more appropriately resolved on a motion for summary judgment as contemplated by the parties in their Joint Report Regarding Proposed Trial and Pretrial Dates 207 . The Court concludes that Plaintiffs' remaining arguments are



*Appendix A*

frivolous. Accordingly, Defendant's Motion for Leave to File an Amended Answer is GRANTED.

01/14/2015 222 AMENDED ANSWER *to Plaintiffs' Complaint* filed by Defendant Thyssen Bornemisza Collection Foundation.

01/20/2015 223 NOTICE OF MOTION AND MOTION for Summary Adjudication as to Impact of 1958 Settlement filed by Defendant Thyssen-Bornemisza Collection Foundation.

\*\*\*

02/20/2015 236 OPPOSITION in opposition to re: MOTION for Summary Adjudication as to Impact of 1958 Settlement 223 filed by Plaintiffs Ava Cassirer, Claude Cassirer, David Cassirer, United Jewish Federation of San Diego County.

02/23/2015 237 STATEMENT of Genuine Disputes of Material Fact in Opposition to Defendant's Motion for Summary Adjudication MOTION for Summary Adjudication as to Impact of 1958 Settlement 223 filed by Plaintiffs Ava Cassirer, David Cassirer, United Jewish Federation of San Diego County.

*Appendix A*

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03/02/2015    239    REPLY in Support MOTION for Summary Adjudication as to Impact of 1958 Settlement 223 filed by Defendant Thyssen-Bornemisza Collection Foundation.

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03/13/2015    245    MINUTES(INCHAMBERS)ORDER DENYING Thyssen-Bornemisza Collection Foundation's Motion for Summary Adjudication 223 ; by Judge John F. Walter: Germanys restitution proceedings were not "final" as to Plaintiffs' claim for return of the Pissarro Painting, the Court remains faithful to its commitment to respect the finality of Germany's restitution proceedings by allowing Plaintiffs an opportunity to pursue their claim for return of the Pissarro Painting. For the foregoing reasons, the Foundation's Motion for Summary Adjudication is DENIED.

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03/23/2015    249    NOTICE OF MOTION AND MOTION for Summary Judgment filed by Defendant Thyssen-Bornemisza Collection Foundation.

*Appendix A*

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03/23/2015    251    NOTICE OF MOTION AND MOTION for Summary Adjudication as to re California Choice of *Law and Memorandum of Points and Authorities* filed by Plaintiffs Ava Cassirer, Claude Cassirer, David Cassirer, United Jewish Federation of San Diego County.

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04/03/2015    254    STATEMENT of the Parties on the Status of Mediation filed by Plaintiffs Ava Cassirer, Claude Cassirer, David Cassirer, United Jewish Federation of San Diego County (*Joint Statement*)

\*\*\*

04/10/2015    257    NOTICE OF MOTION AND MOTION to Certify filed by Defendant Thyssen-Bornemisza Collection Foundation.

04/10/2015    258    NOTICE OF APPEAL to the 9th CCA filed by Defendant Thyssen-Bornemisza Collection Foundation.

\*\*\*

*Appendix A*

- 04/14/2015 261 EX PARTE APPLICATION to Certify DEFENDANT'S INTERLOCUTORY APPEAL AS FRIVOLOUS AND/OR WAIVED filed by Plaintiffs Ava Cassirer, Claude Cassirer, David Cassirer, United Jewish Federation of San Diego County.
- 04/15/2015 262 OPPOSITION re: EX PARTE APPLICATION to Certify DEFENDANT'S INTERLOCUTORY APPEAL AS FRIVOLOUS AND/OR WAIVED 261 filed by Defendant Thyssen-Bornemisza Collection Foundation.
- 04/15/2015 263 REPLY in support of EX PARTE APPLICATION to Certify DEFENDANT'S INTERLOCUTORY APPEAL AS FRIVOLOUS AND/OR WAIVED 261 filed by Plaintiffs Ava Cassirer, Claude Cassirer, David Cassirer, United Jewish Federation of San Diego County.
- 04/16/2015 264 MINUTES (IN CHAMBERS) ORDER GRANTING Plaintiffs' Ex Parte Application for an Order Certifying Defendant's Interlocutory Appeal as Frivolous and/or Waived 261 by Judge John F. Walter: The Court concludes that the time to appeal the denial of

*Appendix A*

sovereign immunity has expired, and thus certifies that the Foundation's interlocutory appeal is frivolous and/or waived. For the foregoing reasons, Plaintiff's Application is GRANTED.

\*\*\*

04/20/2015    271 MEMORANDUM in Opposition to MOTION for Summary Adjudication as to re California Choice of Law and Memorandum of Points and Authorities 251 filed by Defendant Thyssen-Bornemisza Collection Foundation.

\*\*\*

04/16/2015    273 MEMORANDUM in Opposition to MOTION for Summary Judgment 249 filed by Plaintiffs Ava Cassirer, Claude Cassirer, David Cassirer, United Jewish Federation of San Diego County.

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*Appendix A*

05/04/2015 288 REPLY in support of MOTION for Summary Adjudication as to re California Choice of Law *and Memorandum of Points and Authorities* 251 filed by Plaintiffs Ava Cassirer, Claude Cassirer, David Cassirer, United Jewish Federation of San Diego County.

05/04/2015 289 REPLY MOTION for Summary Judgment 249 filed by Defendant Thyssen-Bornemisza Collection Foundation.

\*\*\*

06/04/2015 315 MINUTES(INCHAMBERS)ORDER GRANTING Thyssen-Bornemisza Collection Foundation's Motion for Summary Judgment 249 ; ORDER DENYING Plaintiffs' Motion for Summary Adjudication Re: Choice of California Law 251 by Judge John F. Walter: The parties are ordered to meet and confer and prepare a joint proposed Judgment which is consistent with this Order.

\*\*\*

06/12/2015 323 JUDGMENT by Judge John F. Walter. The Court has ordered that the plaintiffs recover nothing and that

*Appendix A*

the action be dismissed on the merits. This action was decided by Judge John F. Walter on a motion for summary judgment on June 4, 2015.

\*\*\*

06/19/2015    327 NOTICE OF APPEAL to the 9th CCA filed by Plaintiffs Ava Cassirer, Claude Cassirer, David Cassirer, United Jewish Federation of San Diego County. Appeal of Judgment 323 , Order on Motion for Summary Judgment,,, Order on Motion for Summary Adjudication,, 315

\*\*\*

06/23/2015    329 NOTICE OF APPEAL to the 9th CCA filed by Defendant Thyssen-Bornemisza Collection Foundation. Appeal of Judgment 323

\*\*\*

08/13/2015    338 ORDER from Ninth Circuit Court of Appeals filed. CCA # 15-55550, 15-55951, 15-55977. The unopposed motion to consolidate these appeals is granted.

\*\*\*

*Appendix A*

07/10/2017 342 OPINION from Ninth Circuit Court of Appeals filed re: Notice of Appeal to 9th Circuit Court of Appeals 329 filed by Thyssen-Bornemisza Collection Foundation, Notice of Appeal to 9th Circuit Court of Appeals 258 filed by Thyssen-Bornemisza Collection Foundation, Notice of Appeal to 9th Circuit Court of Appeals, 327 filed by United Jewish Federation of San Diego County, Claude Cassirer, Ava Cassirer, David Cassirer. CCA # 15-55550, 15-55977 and 15-55951. We REVERSE and REMAND to the district court for proceedings consistent with this opinion.

\*\*\*

10/10/2018 367 NOTICE of Death for Ava Cassirer filed by Plaintiff David Cassirer.

\*\*\*

11/16/2018 391 CIVIL TRIAL ORDER by Judge John F. Walter. This matter is set for trial before the Honorable John F. Walter, Courtroom No. 7A, United States Courthouse, 350 West First Street, Los Angeles, California. The Court's procedures and requirements for civil trials are set forth. SEE ORDER FOR DETAILS.



*Appendix A*

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11/21/2018 430 ORDER GRANTING STIPULATED MOTION FOR SUBSTITUTION OF PARTY by Judge John F. Walter. Upon stipulation of the parties, this Court hereby orders that the Estate of Ava Cassirer, Egidijus Marcinkevicius, Administrator WWA, be substituted for Ava Cassirer as a Plaintiff in this matter. It is so ordered.

\*\*\*

11/26/2018 440 MINUTES (IN CHAMBERS) ORDER GRANTING MOTION OF COMUNIDAD JUDA DE MADRID AND FEDERACIN DE COMUNIDADES JUDAS DE ESPAA FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF THE PLAINTIFF [filed 11/20/2018; Docket No. 401 ] by Judge John F. Walter. For the reasons stated in the Motion, and in light of the consent of Plaintiffs and nonopposition of Defendant, the Motion is GRANTED.

\*\*\*

11/26/2018 442 TRIAL BRIEF filed by Defendant Thyssen-Bornemisza Collection Foundation..

*Appendix A*

11/26/2018 443 TRIAL BRIEF filed by Plaintiff David Cassirer, Estate of Ava Cassirer, Egidijus Marcinkevicius, United Jewish Federation of San Diego County..

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11/28/2018 455 ORDER GRANTING MOTION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE THE KINGDOM OF SPAIN IN SUPPORT OF DEFENDANT THYSSEN-BORNEMISZA COLLECTION FOUNDATION 449 by Judge John F. Walter. The Court, having considered the Motion for Leave to File Brief of Amicus Curiae the Kingdom of Spain in Support of Defendant Thyssen-Bornemisza Collection Foundation, all papers and arguments submitted in support of that Motion, and in light of the Plaintiffs' consent to the Motion, hereby finds and rules that the Kingdom of Spain's motion is GRANTED.

\*\*\*

12/04/2018 589 MINUTES OF Court Trial (1st Day) held and completed before Judge John F. Walter: Opening statements made. Witnesses called, sworn and testified. Exhibits identified and admitted.

*Appendix A*

Closing arguments made. The Court finds: Matter will be deemed submitted upon completion of all post trial filings.

\*\*\*

01/11/2019 608 TRIAL BRIEF [*POST-TRIAL*] filed by Defendant Thyssen-Bornemisza Collection Foundation..

\*\*\*

02/01/2019 616 RESPONSE filed by Plaintiffs David Cassirer, Estate of Ava Cassirer, Egidijus Marcinkevicius, United Jewish Federation of San Diego Countyto Trial Brief 608 (Response to Post-Trial Brief)

\*\*\*

02/11/2019 620 REPLY filed by Defendant Thyssen-Bornemisza Collection Foundation to Trial Brief 608 (Andre, Sarah)

04/30/2019 621 MINUTES (IN CHAMBERS) FINDINGS OF FACT AND CONCLUSIONS OF LAW by Judge John F. Walter. Counsel shall meet and confer and prepare a joint proposed Judgment consistent with these Findings of Fact and Conclusions of Law.

41a

*Appendix A*

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05/17/2019    629 JUDGMENT by Judge John F. Walter. The Court, having considered the evidence and proposed findings and arguments, HEREBY ORDERS AND ADJUDGES that the Plaintiffs take nothing, and that the action be dismissed on the merits.

05/29/2019    630 NOTICE OF APPEAL to the 9th Circuit Court of Appeals filed by Plaintiff David Cassirer, Estate of Ava Cassirer, Egidijus Marcinkevicius, United Jewish Federation of San Diego County. Appeal of Judgment, 629 .

\*\*\*

08/17/2020    635 MEMORANDUM from Ninth Circuit Court of Appeals filed re: Notice of Appeal to 9th Circuit Court of Appeals, 630 filed by United Jewish Federation of San Diego County, Egidijus Marcinkevicius, Estate of Ava Cassirer, David Cassirer. CCA # 19-55616. The decision of the District Court is AFFIRMED.

09/30/2021    637 Notice re: Supreme Court case 20-1566 re: Notice of Appeal to 9th Circuit Court of Appeals, 630 The Court today

42a

*Appendix A*

entered the following order in the above-entitled case: The petition for a writ of certiorari is granted.

43a

**APPENDIX B — TRIAL EXHIBIT 10**



44a

APPENDIX C — TRIAL EXHIBIT 36

18 July 1951

INVOICE # 285

COMMISSION for

CAMILLE PISSARRO, Rue St. Honore ( effet de pluie )

Painting on canvas ( # 1018 Venturi catalogue )

Purchased for Mr. Brody from Herr URBAN thru Union Bank & Trust Co.

\$ 3105.00

Mr. Sidney Brody

360 South Mapleton

Los Angeles, 24, California

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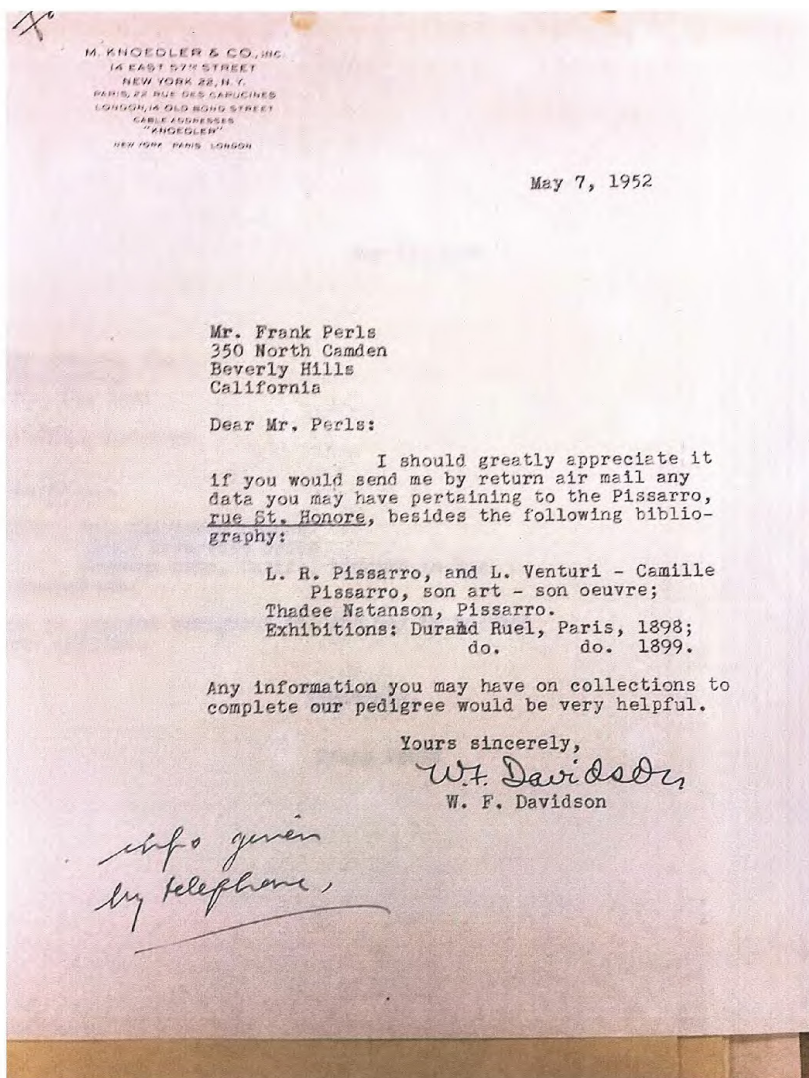
FRANK PERLS PAPERS AND FRANK PERLS GALLERY RECORDS,  
circa 1920-1983, bulk 1949-1975

Archives of American Art, Smithsonian Institution.

FOR RESEARCH PURPOSES ONLY. SUBJECT TO ALL COPYRIGHT LAWS

45a

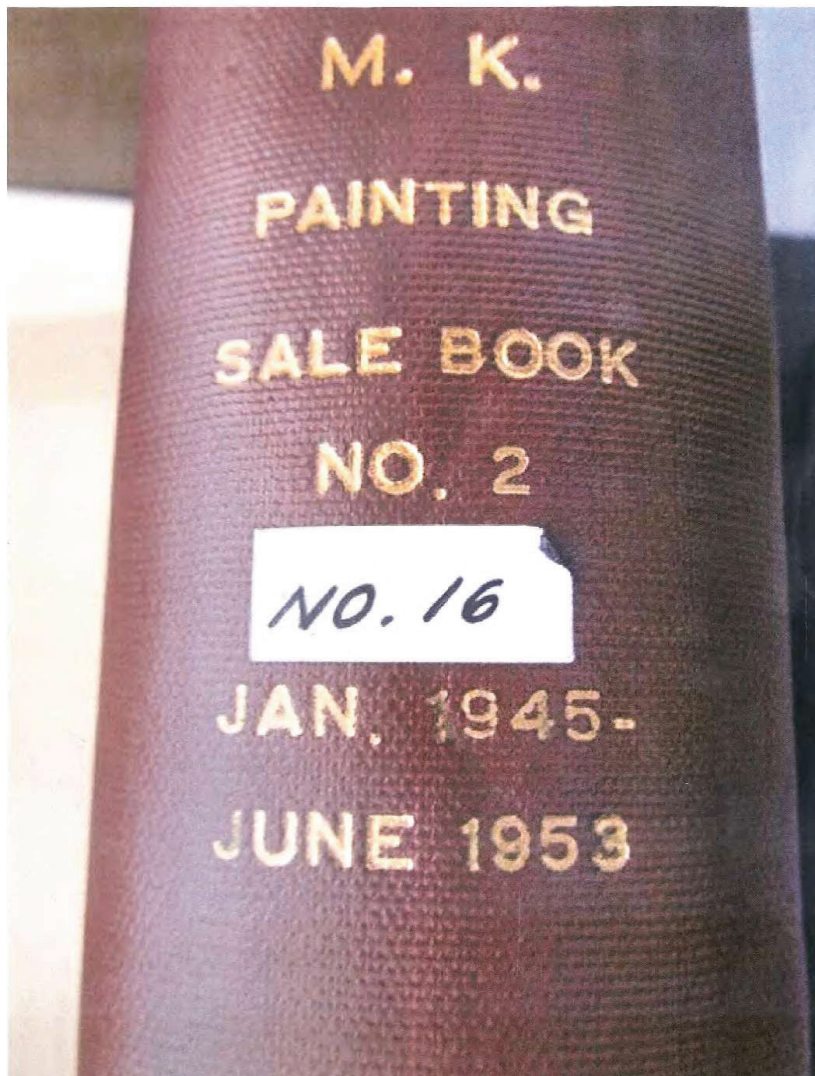
APPENDIX D — TRIAL EXHIBIT 42





46a

APPENDIX E — TRIAL EXHIBIT 62



Appendix E

398

MAY 1952

✓ 3/1	John Hay Whitney	Mankasset, L. Island	
CA4109	59	Plq by Claude Monet	36 1/2 x 29
		"Boats, Etretat"	
		S-3 LR "Claude Monet 84"	
		CA 3152	UP KOTLIN
A4491	2	Plq by Claude Monet	39 1/2 x 25 1/2
		"Willows - Haycock"	
		S-3 LR "Claude Monet 93"	CA 3152
		CA 41	5 Plus Cash
✓ 3/1	Perls Gallery		32 East 58
CA 4065	55	Wc by Raoul Dufy	26 1/2 x 20 1/2
		"Use"	
		For #15 - He said he sold to William Bunker, Wash DC	
✓ 3/1	Time Arts Associates		41 East 57
A4195	47	Plq by Maurice Utrillo	28 x 18 1/2
		"Chateau de Montquichet pres Gagny"	auth. Paris 240
		CA 4	6
X	Youth Consultant on Service		27 West 25
WCA 5	3	Wc by Arthur B. Davies	12 1/2 x 9 1/2
		"Arch of Titus"	
		FAB	8
✓ 0	Robert Werner	71 rue Oberling, Antwerp, Belgium	
A2213	15	Plq by Andrea di Nicoli	16 1/2 x 26
		"The Mass of St. Gregory"	
		W 31	12
✓ 0	Sydney M. Shoentberg	610 Boatman's Bldg, St. Louis, Mo	
A4593	60	Plq by Henri Rousseau	39 1/2 x 31 1/2
		"View of Paris by night"	17,500
Ch 119	11	Plq by Pierre Auguste Renoir	20 1/2 x 25 1/2
		"Le paysan au courage rouge"	13,000
CA 4217	63	Plq by Camille Pissarro	16,500
		"Rue St. Honoré, après pluie, effet de pluie"	
A4462	58	Plq by Georges Rouault	24 1/2 x 29 1/2
		"La plume blanche"	9,000

✓ 3/1	Sydney M.	610 Boatman's Bldg	
A4551	51	Plq by Guo	
		"La"	
		FB	
✓ 3/1	Columbus		
A4404	53	Plq by Cam	
		"Fa"	
		S-X	
✓ 3/1	Hayward		
A4591	59	Plq by Esco	
		"Fa"	
		FAB	
✓ 3/1	Worth		
		Worth	
3/1	Plq by Ch		
3/1	Sainte M		
		FAB	
✓ 3/1	John Lee		
A4193	46	Plq by A.	
		"4"	
		WFB	
✓ 3/1	Worth		
W 1333	13	Plq by J.	
		Sainte	
3/1	Wc by		
✓ 3/1	Vincen		
3/1	Plq Rot		
		OP	

Appendix E

MAY 20, 1926

Frank Frels Gallery *FF*  
 350 No. Camden Drive  
 Beverly Hills, Cal

May 26, 1926

We report the sale from CONSIGNMENT ACCOUNT:  
 CA4217 Painting by Camille Pissarro  
 "Rue St. Honore, apres midi, effet de pluie"  
 Net \$ 14,850.00

*2015*

Appendix E

ARTIST		PISSARRO, Camille		TITLE		NO. CA4217	
				"Rue St. Honore, apres midi, effet de Pluie"			
ORIGINAL COST	1949	IN STOCK AT		1951	ASKING PRICE		
		1950					
\$14,850. Net	1952	1953		1954			
SOLD TO		DATE	S. P.	FOLIO			
Sydney Shoenberg		1/12/52		298			
REMARKS		Frank Perls Gallery					

50a

APPENDIX F — TRIAL EXHIBIT 65

31 May 1952

INVOICE # 420

CAMILLE PISSARRO

" Rue St. Honore ( effet de Pluie)"

Oil Painting

Venturi # 1018

From the Dr. M. Urban collection, Munich

From Sidney F. Brody

\$ 14,850.00

Sold in New York

M. Knoedler & Co., Inc.  
14 East 57th Street  
New York 22, N.Y.

FRANK PERLS PAPERS AND FRANK PERLS GALLERY RECORDS,  
circa 1920-1983, plus 1949-1975

Archives of American Art, Smithsonian Institution.

FOR RESEARCH PURPOSES ONLY. SUBJECT TO ALL COPYRIGHT LAWS

APPENDIX G — TRIAL EXHIBIT 72

LEHIGH 5-3520

*Per Anna - copy 27*

STEPHEN HAHN GALLERY  
960 MADISON AVENUE  
NEW YORK, N.Y. 10021

November 18, 1976

Baron H.H. Thyssen-Bornemisza  
Villa Favorita  
6976 Castagnola  
Switzerland

*1*

*Inv. Nr. 1714*

.....  
Camille PISSARRO "Rue Saint-Honoré, apres-midi, effet de pluie"  
Oil on canvas  
32 X 25 1/2 inches (81 X 65 cm.)  
Signed and dated lower right, 1897

Exhibited: Paris, Galerie Durand-Ruel, "C. Pissarro",  
June 1898, No. 9.  
Paris, Galerie Durand-Ruel, "Tableaux  
par Monet, Pissarro, Renoir et Sisley",  
April 1899, No. 64.

Literature: L. Venturi, Volume I, listed on page 222,  
No. 1018, Volume II, reproduced No. 1018,  
plate 204.

*Q* \$ 275,000.00 *125,000,*  
*U*  
*300*

With compliments

Appendix G

**ART COUNCIL ESTABLISHMENT VADUZ** Liechtenstein

DIA.	GENR.	BUCHH.	MANOV.	QAL.
EMBRAB 22. APR. 1977				
ERLEDIGT				

H.H. Thyssen-Bornemisza, ESQ.  
Villa Favorita

6976 Castagnola

FL-9490 Vaduz, April 21, 1977  
P.O. Box 34837

B I L L

Painting from Pissarro: "Rue St. Honoré après-midi,  
effet de pluie"

Commission: US\$ 25.000.--  
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53a

Appendix G

**ART COUNCIL ESTABLISHMENT VADUZ** Liechtenstein

DIV.	SEKR.	BUCHH.	WALD.	CAF.
EINGANG 22. APR. 1977				
ERLEDIGT				

H.H. Thyssen-Bornemisza, ESQ.  
Villa Favorita

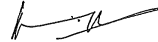
6976 Castagnola

FL-9490 Vaduz, April 21, 1977  
P.O. Box 34637

B I L L

Painting from Pissarro: "Rue St. Honoré après-midi,  
effet de pluie"

Commission: US\$ 25.000.--  
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TBF 002262



54a

APPENDIX H — TRIAL EXHIBIT 348



55a

*Appendix H*



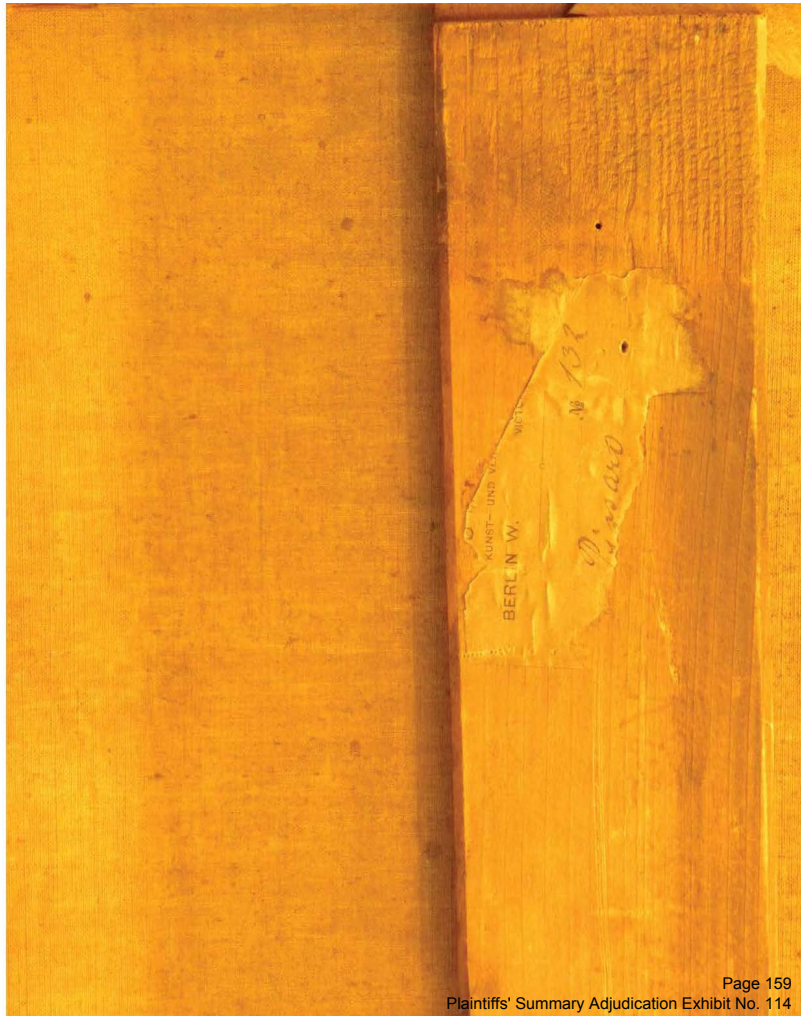
56a

*Appendix H*



57a

*Appendix H*



58a

*Appendix H*



59a

*Appendix H*



60a

*Appendix H*



61a

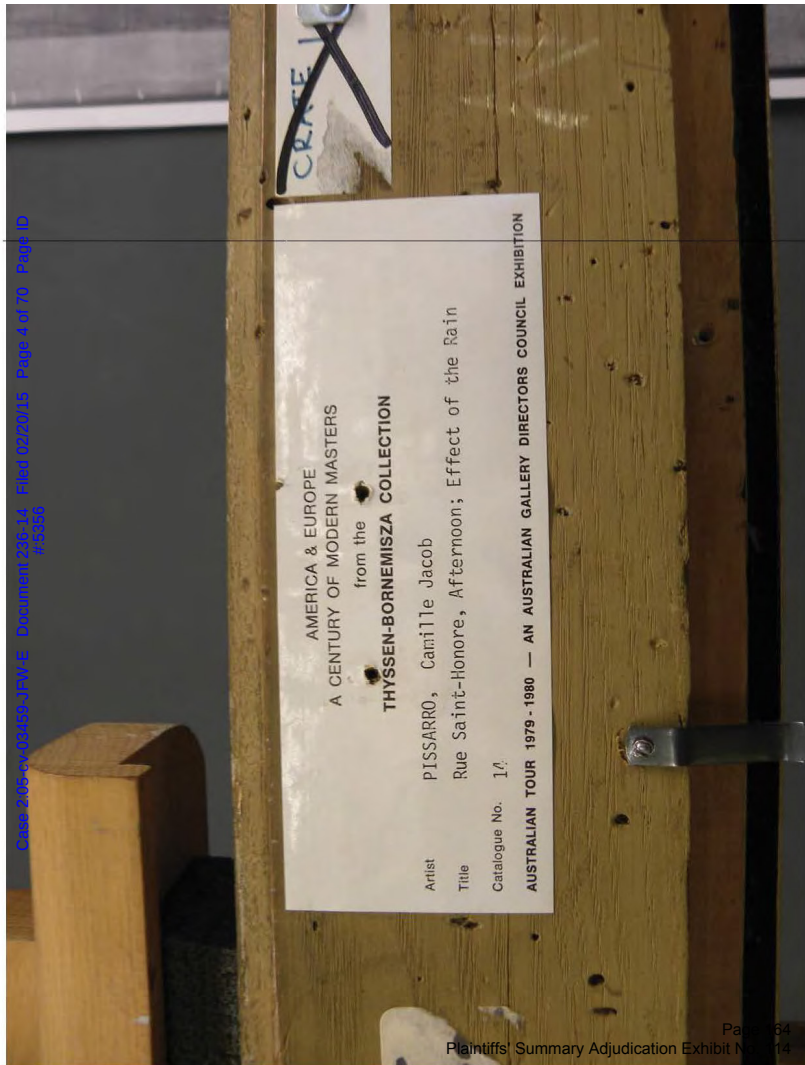
*Appendix H*





62a

*Appendix H*



**APPENDIX I — DIRECT EXAMINATION  
DECLARATION OF JONATHAN PETROPOULOS  
IN THE UNITED STATES DISTRICT COURT,  
CENTRAL DISTRICT OF CALIFORNIA,  
WESTERN DIVISION, FILED NOVEMBER 20, 2018**

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

Case No. CV 05-03459 JFW (Ex)

DAVID CASSIRER, AVA CASSIRER, AND UNITED  
JEWISH FEDERATION OF SAN DIEGO, A  
CALIFORNIA NON-PROFIT CORPORATION,

*Plaintiffs,*

v.

THYSSEN-BORNEMISZA COLLECTION  
FOUNDATION, AN AGENCY OR  
INSTRUMENTALITY OF THE  
KINGDOM OF SPAIN,

*Defendants.*

**DIRECT EXAMINATION  
DECLARATION OF JONATHAN PETROPOULOS**

Judge: Hon. John F. Walter  
Courtroom: 7A  
Trial: December 4, 2018  
Time: 8:00 a.m.

*Appendix I*

I, Jonathan Petropoulos, declare as follows:

**A. INTRODUCTION**

I am the John V. Croul Professor of European History at Claremont McKenna College in Southern California. A more complete discussion of my background, education, training and experience will be set forth following the scope of my opinions and an overview of them.

I have personal knowledge of the facts set forth in this Declaration concerning my qualifications. The statements below concerning my opinions and the bases upon which those opinions were formed are true and correct. I understand that this Declaration will be submitted to the Court in connection with the trial of the above-captioned matter, and that it will serve as my direct examination testimony in the case.

**B. SCOPE OF OPINIONS<sup>1</sup>**

1. I have been asked by Plaintiffs to provide this Declaration to be submitted as my direct examination in the trial of this cause set to commence on December 4, 2018.

2. The case is about the restitution of the painting *Rue Saint-Honoré, après-midi, effet de pluie*, oil on canvas @ 1897 by Camille Pissarro (“the Painting,” “the Pissarro,”

---

1. By separate Declaration, I am resubmitting my previous opinions regarding the 1958 German Settlement Agreement issue.

*Appendix I*

or “*Rue Saint-Honoré*”). The Painting was looted by the Nazis from Lilly Cassirer (“Lilly”) in Germany in 1939. I understand that this is not disputed.

3. I have been asked to opine on: (i) the circumstances surrounding the purchase of the *Rue Saint-Honoré* by the Baron Hans Heinrich Thyssen-Bornemisza (the “Baron”) in 1976, and the subsequent purchase by the Republic of Spain and the Thyssen-Bornemisza Collection Foundation in 1993 (and the preceding loan of the Painting by the Baron to the Republic of Spain in 1988); (ii) the provenance research (and lack thereof) accompanying those transactions, and what it demonstrates regarding the propriety of each of those transactions; (iii) whether the Baron was acting in good faith when he purchased the Painting without conducting any meaningful provenance research and whether the Baron had knowledge the Painting was stolen; (iv) whether the Kingdom of Spain and TBC had knowledge the *Rue Saint-Honoré* was stolen at the time they first borrowed it from the Baron and later purchased it.

**C. OVERVIEW OF OPINIONS**

4. Each of my opinions, and the support for same, will be discussed more fully below. The remainder of this section is meant as an overview of my opinions, and not a limitation of the facts and opinions set forth in the remainder of this Declaration.

5. At the time the Baron purchased the *Rue Saint-Honoré* in 1976, he knew it was stolen. At the very least, he was willfully blind to that fact.

*Appendix I*

6. In 1976, the Baron was one of the world's most sophisticated art collectors. Additionally, he employed and otherwise had access to the world's leading art experts.

7. Numerous pieces of evidence were known by the Baron which demonstrated that the stated provenance for the *Rue Saint-Honoré* at the time of his purchase was incomplete and inaccurate. This evidence not only demonstrated that the provenance was inaccurate, it also demonstrated that the Painting had been stolen. This evidence is discussed in detail below.

8. Nevertheless, the Baron did no independent provenance research. The only reasonable explanation for a sophisticated art collector, as the Baron undoubtedly was, not to do any provenance research is that he knew the Painting was stolen, and that provenance research would only re-confirm that knowledge, and create a more definitive paper trail of his guilt.

9. Even worse, the Baron took actions immediately following his purchase of the Painting to obfuscate its provenance.

10. He did not act in good faith in his purchase of, his possession of, and later his sale of the Painting.

11. The Kingdom of Spain in 1988 signed an agreement with the Baron for the loan of the Baron's art collection, including the *Rue Saint-Honoré*.

*Appendix I*

12. At that time, TBC was formed as an entity to first display the Painting and later to also own it.<sup>2</sup> TBC purchased the Painting from the Baron in 1993.

13. The Baron was installed as “Chairman for Life” of TBC at the time of its formation. The Baron’s wife was also named as a member of TBC’s board, and the Baron was entitled to name three other board members – thus, a total of five directors, 50% of the TBC board, were the Baron’s nominees. Joint Exhibit (“Ex.”) 83 at 10014, 10021; Ex. 132 at 5–6. In essence, the Baron was both the seller and purchaser of the Painting in the 1993 transaction.

14. As set forth above and discussed more fully below, the evidence shows the Baron was specifically aware that the Painting was stolen. As he was part of TBC, controlled 50% of its Board and was himself the most influential officer there, the information regarding the *Rue Saint-Honoré* known to the Baron was also known by TBC.

15. Independent of the knowledge TBC had through the Baron, the evidence known to TBC at the time of its borrowing and later purchasing the *Rue Saint-Honoré* demonstrates that TBC’s managers/staff also knew the Painting was stolen. TBC’s actions and inactions surrounding that purchase further support my opinion.

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2. It is my understanding that TBC has stipulated that it is an instrumentality of the Kingdom of Spain. Accordingly, TBC will be used throughout this Declaration, even when the references would sometimes also include the Kingdom of Spain.

*Appendix I*

16. TBC knew that the stated provenance for the Painting was incomplete and inaccurate before it completed its purchase. Nevertheless, instead of performing complete provenance research on the Painting, TBC employed a provenance research protocol designed not to discover the true provenance of the Painting, i.e., to only inspect the provenance of paintings from 1980 forward. TBC's stated reason for this decision was that establishing good title from that point would support a later defense that it was entitled to keep the Painting even if the true owners later made a claim of ownership. This is antithetical to genuine provenance research.

**D. BACKGROUND**

17. The following provides a brief description of my background and qualifications. A complete description of my relevant experience is set forth in my *curriculum vitae*, a true and correct copy of which is attached hereto as Ex. 360 and is incorporated herein by reference.

18. I received a B.A. in history from UCLA in 1983. I received my Masters degree in history from Harvard University in 1984. I then received my Ph.D. in history from Harvard in 1990, where I studied history and art history (one of my four fields in my Ph.D. comprehensive examinations was modern art history). After receiving my Ph.D., I also held an appointment as a Lecturer in History and in History & Literature at Harvard University.

19. I began researching the subject of Nazi art looting, restitution, and provenance in 1983, when I commenced

*Appendix I*

my graduate work in history and art history. I am the author of *Art as Politics in the Third Reich* (University of North Carolina Press, 1996); *The Faustian Bargain: The Art World in Nazi Germany* (Oxford University Press, 2000); *Royals and the Reich: The Princes von Hessen in Nazi Germany* (Oxford University Press, 2006); and *Artists Under Hitler: Collaboration and Survival in Nazi Germany* (Yale University Press, 2014). I am also co-editor of a number of volumes, including *Gray Zones: Ambiguity and Compromise During and After the Holocaust* (Berghahn Books, 2005). My *curriculum vitae* includes a complete list of all publications I have authored in the last 25 years.

20. I have worked on the subject of Nazi looted art and restitution for over thirty-five years. My published articles on the topic include: “Co-Opting Nazi Germany: Neutrality in Europe during World War II,” in *Dimensions* 11, No. 1 (Spring 1997), 15-21; and “Business as Usual: Switzerland, the Commerce in Artworks during and After World War II, and National Identity,” in *Contemporary Austrian Studies* VII (1998), 229-42; and then, more recently, “From Lucerne to Washington, DC: ‘Degenerate Art’ and the Question of Restitution,” in Olaf Peters, ed., *Degenerate Art: The Attack on Modern Art in Nazi Germany, 1937* (New York: Neue Galerie, 2014), 288-307. I have conducted research on the subject in Swiss archives, including the Swiss Federal Archive in Bern.

21. I am also well acquainted with the scholarly literature on the subject, including Thomas Buomberger, *Raubkunst-Kunstraub. Die Schweiz und der Handel*



*Appendix I*

*mit gestohlenen Kulturgütern zur Zeit des Zweiten Weltkrieges* [Switzerland and the Trade in Stolen Cultural Objects at the Time of the Second World War] (Zürich: Orell Füssli, 1998); Esther Tisa Francini, Anja Heuss, and Georg Kreis, *Fluchtgut-Raubgut. Der Transfer von Kulturgütern in und über die Schweiz 1933-1945 und die Frage der Restitution* [Flight Property-Stolen Property: The Transfer of Cultural Property to and through Switzerland, 1933-1945, and the Question of Restitution] (Zurich: Chronos Verlag, 2001); and Mario König and Bettina Zeugin, eds., *Switzerland, National Socialism and the Second World War. Final Report of the Independent Commission of Experts Switzerland—Second World War* (Zürich: Pendo, 2002). The final two volumes represented the efforts of government-authorized commissions to examine the subject of Swiss public and private involvement in looting property from Jews during World War II and failure in almost all cases to restitute property after the war.

22. I have worked on museum exhibitions, including at the Los Angeles County Museum of Art, where I helped prepare the 1991 exhibition, *Degenerate Art: The Fate of the Avant-Garde in Nazi Germany*. I also helped write the panel texts for the Bloch Bauer Klimt paintings that were exhibited at the Los Angeles County Museum of Art after they were restituted from Austria in 2006.<sup>3</sup> Here, I utilized my expertise to trace the paintings' ownership history (that is, provenance) back to their creation in

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3. The Klimts were recovered after the U.S. Supreme Court decided. *Republic of Austria v. Altmann* in the claimant's favor in 2004.

*Appendix I*

the early twentieth century.<sup>4</sup> In 1994, I helped prepare the exhibition *Art and Dictatorship* in Vienna. For this exhibition at the Künstlerhaus, I helped with research, the arranging of loans, and I contributed two articles to the catalogue. My experience working at museums involved provenance research, including how to research and document the history of an object.

23. From 1998 to 2000, I served as Research Director for Art and Cultural Property on the Presidential Commission on Holocaust Assets in the United States (“PCHA”), where I helped draft the report, *Restitution and Plunder: The U.S. and Holocaust Victims’ Assets* (2001). As Research Director, I supervised a staff of researchers who combed archives in the United States and Europe in order to document how representatives of the U.S. government (including the Armed Forces) handled the assets that had been looted by the Nazis and their Hungarian collaborators from Holocaust victims during and after the war. As Research Director, I also provided expert testimony to the Select Committee on Culture, Media and Sport in the U.K. House of Commons and to the Banking and Finance Committee of the U.S. House of Representatives.

24. I have been engaged by art dealers to examine works that they are considering acquiring and to conduct provenance research. I am also regularly contacted by auction houses, art dealers, and museums to answer

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4. “**Provenance** (from the *French provenir*, ‘to come from/forth’) is the chronology of the ownership, custody or location of a historical object.” <https://en.wikipedia.org/wiki/Provenance>.

*Appendix I*

research queries regarding the provenance of art works. As one recent example, I vetted five paintings for New York art dealers Jack Kilgore and Rachel Kaminsky in the past four years (Jack Kilgore & Co., 154 East 71st Street, New York, NY 10021). Other assignments have included but were not necessarily limited to reading scholarly literature, consulting databases, making inquiries with other art dealers and museums, and sometimes researching in archives.

25. Having written three scholarly books on the art world and National Socialism, I have spent a great deal of time in archives in Europe and the United States. In addition, as Research Director for Art and Cultural Property for the United States Presidential Commission on Holocaust Era Assets, my team and I had an office in the National Archives and Records Administration (“NARA”) in College Park. I have spent hundreds of hours researching in NARA, and more generally know my way around archives and libraries. For this case, I went to the Staatsarchiv München (State Archives, Munich) and examined the denazification file for Jakob Scheidwimmer, the Nazi affiliated art dealer who facilitated the theft of the *Rue Saint-Honoré* from Lilly.

26. Additionally, I have also assisted Holocaust survivors, heirs of Holocaust victims, and their legal representatives to assist with research into the history and disposition of artworks owned by their families. This work has involved provenance research. For example, I played a central role in helping a family retrieve a Monet that had been stolen by the Nazis.

*Appendix I*

27. For the last four years, I have taught students at Claremont McKenna College how to conduct provenance research. It is part of my course titled Museums and Leadership. I have also lectured to provenance researchers, including to the working group of provenance researchers in Germany. In addition, I have spoken on provenance research at academic conferences, such as at the Western Art Museums Association in 2001. Most recently, I was a featured speaker on the panel on Finding and Recovering Nazi Looted Art at a conference titled *Righting a Wrong: The Future of Nazi Looted Art Recovery in the US and Abroad*, in Los Angeles in 2018 jointly sponsored by Sotheby's and Cypress LLP.

28. I received an acknowledgment in *The AAM Guide to Provenance Research* co-authored by Nancy Yeide, Konstantin Akinsha, and Amy Walsh published by the American Association of Museums ("AAM"). I also served on a working group for the AAM's Task Force on Nazi-Era Provenance and helped create the Internet portal used by museums to facilitate provenance research.

**E. EXPERT WITNESS EXPERIENCE**

29. I have served as an expert witness (as an historian/art historian) in a number of cases where Holocaust victims sought to recover lost artworks. These include:

a. *Republic of Austria v Altmann* (No. CV 00-8913 (FMC)), originally filed in the Central District of California (six paintings by Gustav Klimt);

*Appendix I*

b. *De Csepel v. Republic of Hungary* (No. 10 Civ. 1261 (ESH)) in the District of Columbia District (art belonging to the Herzog family of Hungary);

c. *Rosner v. United States of America* (No. 01 CV 01859) in the Southern District of Florida (“Hungarian Gold Train”);

d. *Warin v. Wildenstein* (No. 115143/99) in New York State Court (medieval manuscripts looted by the Nazis);

e. *Bakalar v. Vavra* (No. 08 Civ. 5119) in the Southern District of New York (artwork by Egon Schiele);

f. *Boston Museum of Fine Arts vs. Seger-Thomschitz* in U.S. District Court, District of Massachusetts (No. 08-10097-RWZ) (Kokoschka painting);

g. *Schoeps v. The Museum of Modern Art* (No. 07 Civ. 11074 (JSR)) in the Southern District of New York (painting by Picasso);

h. *Grosz v. The Museum of Modern Art* (No. 09 Civ. 3706 (CM) (THK)) in the Southern District of New York (three pictures by George Grosz);

i. *Schoeps v. Bayern* (No. 13 Civ. 2048 (JSR)) in the Southern District of New York (painting by Picasso);

j. *Marei von Saher v. The Norton Simon Museum* (No. CV 07-2866 JFW (SSx)) in the Central

*Appendix I*

District of California, Western Division (two paintings by Cranach the Elder);

k. *Frenk v. Rabenou*, in the Supreme Court of the State of New York (No. 650298/2013), (art collection of Paul Westheim); and

l. *Reif v. Nagy* (a picture by Egon Schiele from the collection of Fritz Grünbaum).

30. Pursuant to the highest standards in my field, my objective is to approach historical issues in a fair and objective manner, and to present and summarize complex historical documents in such a way as to facilitate understanding the events in question. I have been retained in this action at the rate of \$300 per hour. My fee is not contingent on the outcome of this case.

31. Based upon my experience, as described above in brief and further reflected in my *curriculum vitae* attached hereto as Ex. 360, I am qualified to testify regarding provenance research, historical research, documentation, and historical issues relating to the subject matter of this case. I am also qualified to provide opinions on the types of information that provide knowledge of theft to individuals and/or institutions (e.g., sophisticated art collectors, museum officials, and consultants) with experience and expertise regarding the provenance of a work of art.

*Appendix I***F. DOCUMENT CITATION AND REFERENCES**

32. Documents referenced herein that I understand are also being moved into evidence are cited using their Joint Trial Exhibit List number. There are other documents cited herein that are more general in nature and have not been included on the parties Joint Trial Exhibit List.

**G. IMPORTANCE OF THE PAINTING FROM AN ART HISTORICAL PERSPECTIVE**

33. Any discussion regarding the Baron's and later TBC's knowledge of the theft of the *Rue Saint-Honoré* must begin with an understanding of the Painting itself.

34. The *Rue Saint-Honoré* is a late and exceptional work in the oeuvre of French Impressionist master, Camille Pissarro (1830-1903). It is not only an important painting – executed while Pissarro was still in command of his extraordinary skills and part of an iconic series of Paris cityscapes – but also one that is filled with historic resonances.

35. Pissarro, a Jewish artist, painted the Painting in 1897 in the midst of the “Dreyfus Affair,” a scandal that erupted in 1894 about a spy among the French General Staff that riveted the French nation and gave rise to acute anti-Semitism there. Captain Alfred Dreyfus was an Alsatian Jew who was falsely accused of spying for the Germans, and imprisoned for five years on Devil's Island in French Guyana (he was exonerated in 1906). Pissarro

*Appendix I*

believed that he (Pissarro) looked stereotypically Jewish, and feared for his safety on the streets of Paris during this period, with the anti-Semitism that was prevalent. He found a safer work space on the upper floor of a building, the Grand Hotel du Louvre, looking out on Rue Saint Honoré. He created the *Rue Saint-Honoré* from this spot as part of a limited series of Paris streetscapes.

36. The Painting shows a relatively modern Paris after the reconstruction of the city undertaken by Baron Georges Haussmann in the latter half of the nineteenth century. It captures the transition into the twentieth century, with older features like horse-drawn carriages and Mansard roofs juxtaposed with retail shops and crowded urban streets. The Painting has unique atmospherics and captures the grays, browns, and other tones so emblematic of Paris. The Painting is part of a series of Pissarro paintings of Paris in the late 1890s that “are amongst the supreme achievements of Impressionism, taking their place alongside Claude Monet’s series of Rouen Cathedral, poplars and grain stacks and the later waterlilies.” Ex. 300, Sotheby’s, *Camille Pissarro, Le Boulevard de Montmartre, Matinée de Printemps*, at 5.

37. I agree with the TBC catalogue’s description of the Painting, that it portrays the “relationship between the modernisation of the French capital under Napoleon III and the new Impressionist painting is expressed to perfection.” TBC website, <https://www.museothyssen.org/en/collection/artists/pissarro-camille/rue-saint-honore-afternoon-effect-rain>.



*Appendix I*

38. Pissarro often painted the same subject in different weather and light. The Painting is a particularly moving portrayal of the Rue Saint Honoré in the rain. *See* Ex. 370<sup>5</sup> (Melissa Müller, “Lilly (1876-1962) and Claude Cassirer (b. 1921), Berlin,” in Melissa Müller and Monika Tatzkow, *Lost Lives, Lost Art: Jewish Collectors, Nazi Art Theft, and the Quest for Justice* (New York: Vendome Press, 2010)).

39. The Painting is also important for the history of art in terms of what it says about collecting and the reception of modern art during the *fin de siècle* period (turn of the century, i.e., est. 1880-1914). Impressionist art – especially French Impressionist works like the Painting – were still highly controversial in Imperial Germany (1871-1918). Kaiser Wilhelm II had taken a forceful stand against such art and tried to remove the director of the Berlin National Gallery, Hugo von Tschudi, in the early 1900s because Tschudi had acquired French Impressionist works. To Kaiser Wilhelm II and his allies, this new art represented a threat of degeneration and social disorder, among other dangers, and the Emperor played a leading role in a vitriolic culture war. It is significant that the Painting (and other similar works) came to Germany due to the initiative of a small group of supporters of modern art, including members of the Cassirer family, a highly successful and assimilated German-Jewish family, and other supporters of modern art.

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5. All exhibits after 366 are ones the Plaintiffs seek to add to the Final Pre-Trial Exhibit Stipulation, due on November 27, 2018. TBC has indicated that they will object to at least a portion of these additional exhibits.

*Appendix I*

40. The Cassirer family's preeminent role in fostering the Impressionist movement and other modern art is part of a larger narrative of art history. It has been recorded by many art historians and cultural historians, including four who have personal connections to the Cassirer family and gallery. These are Bernhard Echte and Walter Feilchenfeldt, *Kunstsalon Cassirer: Die Ausstellungen*, IV. Vols. (Wädenswil: Nimbus, 2011-14); Rahel Feilchenfeldt, *Ein Fest der Künste: Paul Cassirer, der Kunsthändler als Verleger* (Munich: C.H. Beck, 2006); and Peter Paret, *The Berlin Secession: Modernism and Its Enemies in Imperial Germany* (Cambridge: Harvard University Press, 1980). The Cassirers' connection to the *Rue Saint-Honoré*, being part of this larger narrative of art history, adds historical, cultural, and financial value to the Painting.

**H. THE CASSIRERS**

41. As discussed more fully below, the Baron and TBC each had evidence at the time of their respective purchases and possession of the Painting which showed that the Painting was at one time owned or at least possessed by the Cassirer family. Accordingly, it is necessary to understand who the Cassirers were, as it is informative of the knowledge of the Baron and TBC that the Painting was stolen.

42. The Cassirers were a closely-knit German-Jewish family of seven brothers who rose to prominence as industrialists and businessmen, with holdings in timber, paper, electrical cables and real estate. Members of the

*Appendix I*

next generation distinguished themselves in many cultural fields, including the art trade, publishing, and academia, among others.

43. The Cassirers often lived proximate to one another. For example, Paul Cassirer, one of the brothers, had a house at Victoriastrasse 35 in Berlin (near where the Berlin Philharmonic stands today) and other family members lived on the same street.

44. Paul Cassirer and his cousin Bruno founded a prominent art gallery and publishing house in Berlin at Victoriastrasse 35 in 1898. The Cassirer Gallery championed the works of the Impressionists (and Post-Impressionists). Art historians and cultural historians today routinely note the Cassirer Gallery's influence on the development of Impressionist painting. The address of the Cassirer Gallery was so famous that it has found expression in its inclusion in the title of the scholarly volume edited by Helga Thieme and Volker Probst, *Victoriastrasse 35. Ernst Barlach und die klassische Moderne im Kunstsalon und Verlag Paul Cassirer* [Victoriastrasse 35. Ernst Barlach and Classic Modernism in the Art Salon and Publishing House Paul Cassirer] (Gustrow, Barlach Stiftung, 2003). As noted above, the history of the Cassirer Gallery has been documented in a series of scholarly volumes edited by Bernhard Echte and Walter Feilchenfeldt: *Kunstsalon Bruno & Paul Cassirer. Die Ausstellungen 1898-1901* (Zurich: Nimbus, 2011).

45. The *Rue Saint-Honoré* was held by several members of the Cassirer family and stayed in the family

*Appendix I*

for approximately forty years prior to the theft by the Nazis. The Painting was acquired from Camille Pissarro by Paul Durand-Ruel, the primary dealer of the artist. Durand-Ruel, who exhibited the picture in 1898 and 1899, sold the Painting to Berlin dealer Paul Cassirer shortly thereafter. In their catalogue raisonné of Pissarro's paintings, Joachim Pissarro, and Claire Durand-Ruel Snollaerts provide the date of 11 April 1900. *See Ex. 107 at 746, Picture 1196 (Wildenstein Institute, Joachim Pissarro, and Claire Durand-Ruel Snollaerts, Vol. III, Pissarro: Critical Catalogue of Paintings (Milan: Skira Editore, 2005)).*

46. The *Rue Saint-Honoré* was owned and possessed exclusively by the Cassirer family until 1939, when it was stolen by the Nazis. The last Cassirer to own the Painting before it was stolen was Lilly Cassirer, who had inherited it from her husband Fritz after his passing in 1926.

47. Lilly moved in 1926 from Berlin to Munich (where she had family) and took the Painting with her to her new Munich home at Ludwigstrasse 176. *See Ex. 370, supra at 16 (Müller).* She remarried one of the most established physicians in Europe, Professor Otto Neubauer, in January 1939, who made significant contributions to biochemical science and metabolic pathology, and developed a number of important medical instruments for clinical use. Dr. Neubauer was the head physician of the teaching hospital in Munich, the Munich Schwabinger Hospital, a position he was forced to resign in 1933 with the rise of the Nazi regime.

*Appendix I*

48. Lilly displayed the Painting prominently in the main living room of her home in Germany before the war. As seen in the photo of Lilly's Parlor, the placement of the Painting at the heart of Lilly's home shows the importance given to the family's Pissarro painting and that the family had a significant attachment to it. *See* Ex. 10. This was a place where the family would gather and was a public room as well. Ownership of and pride in the Painting was clearly tied to the family's history and identity.

49. None of the Cassirers who owned and possessed the Painting ever altered it in any way. I have conducted a physical inspection of the Painting and reviewed conservation reports maintained by TBC, and in my opinion, the current frame is the same one associated with the painting at the time when it was owned by the Cassirer family.

50. On the inside edge of the Painting, the name "Julius" appears to be inscribed in pencil. *See* Ex. 348 at 5 (photograph from my inspection in Madrid). I believe that this is likely a reference to Julius Cassirer—an early Cassirer family owner of the Painting. In other words, Lilly kept the picture exactly as it was when she obtained it. She did not change the frame or have it re-lined. The reverse of the painting contains the stamp of Paris "colorman" (someone who sells artists' supplies) P. Contet (Rue Lafayette 34), who provided materials to Pissarro. Ex. 379 at 3. There is no new backing to the Painting.

51. My opinion concerning the unique value that Lilly placed on the Painting is also supported by the fact that

*Appendix I*

Lilly kept the painting with her as she moved from Berlin to Munich; she attempted to take it with her from Munich to England; and she subsequently went to great lengths after the war to seek its physical restitution.

**I. NAZI PERSECUTION OF THE CASSIRERS AND OTHER JEWISH ART DEALERS**

52. The massive, unprecedented scope of Nazi art looting was well understood by the Baron and TBC at the times they each purchased and possessed the Painting, particularly in light of the Nazi past of the Baron's family. *See* Exs. 310, 343-45. This history is critical to understanding their knowledge of the theft of the Painting. That issue is discussed in a later section.

53. TBC and its experts fail to take appropriate account of the consequences of the pervasive nature of Nazi looting, especially from Jewish families, and in particular, its relevance to the Post-War art market. Important here, to begin, is the specific targeting of Jewish art dealers, including the Cassirers.

54. The Nazis routinely stripped Jewish families of their possessions to pauperize and dehumanize the Jewish people. As part of their "Aryanization" campaign, the Nazis first indiscriminately stole the property of Jews and then attempted to exterminate them. As part of this program, the Nazis systematically targeted Jewish art dealers and used various means to loot their artworks, both by direct theft and by forced "sales," resulting in the theft of thousands of works of art from Jewish dealers

*Appendix I*

and families. See, for example, Hector Feliciano, *The Lost Museum* (New York: Basic Books, 1995). This was well-known in both the broader historical context and also specifically by those engaged in the art world.

55. The Baron and TBC were among the world's most sophisticated art collectors, and either directly employed or consulted with the world's leading art experts.

56. It was well-known that the Cassirer family, one of the most prominent Jewish family art collectors in Germany (along with the Rothschilds and Mendelssohn-Bartholdys), were the victims of Nazi looting, not to mention other Nazi crimes against humanity. It was also understood by the Baron and TBC that Cassirer family members had their artworks looted by the Nazis. For example, Bruno Cassirer fled Germany as a result of persecution in 1938. Part of his art collection was seized by the Nazis after he left, and auctioned off. His heirs were able to recover much of this Nazi looted art collection in subsequent decades. The portrait of Bruno Cassirer by Max Liebermann, which was stolen by the Nazis in 1941, was restituted and sold in 2017. *See* the sales notice from Christie's at <https://www.christies.com/lotfinder/Lot/max-liebermann-1847-1935-bildnis-des-verlegers-bruno-6088372-details.aspx>. In the early 2000's, hundreds of graphic works by Max Slevogt and Lovis Corinth were returned to Bruno Cassirer's heirs. *See* the summary from the German Lost Art Foundation (Deutsches Zentrum Kulturgutverluste) for Bruno Cassirer at [http://www.lostart.de/Content/051\\_ProvenienzRaubkunst/DE/Sammler/C/Cassirer,%20Bruno.html](http://www.lostart.de/Content/051_ProvenienzRaubkunst/DE/Sammler/C/Cassirer,%20Bruno.html). Art dealer Max

*Appendix I*

Cassirer, who also resided in Berlin, was also the victim of substantial looting by the Nazi state in 1941 (his heirs recovered a Max Liebermann picture, *Garden at the Wannsee*, in 2013). See <http://artdaily.com/news/62893/Israel-Museum-restitutes-Impressionist-masterpiece-by-German-Jewish-artist-Max-Liebermann#.W-4d9l6Wx9A>. These are a just a few of the many instances of other members of the Cassirer family having their artworks looted by the Nazis, just like the *Rue Saint-Honoré* was stolen from Lilly. As noted, some of these stolen works were recovered in the decades after the war.

57. Like all Jews in Germany, Lilly faced an increasingly hostile environment, culminating in Kristallnacht in November of 1938. By 1939, Lilly and her husband Professor Neubauer had resolved to escape Nazi Germany. As part of the process, they needed to secure a permit from the Foreign Currency Office in Munich (Devisenstelle München). The registration of assets was part of the process of denuding émigrés of their property (i.e., stealing their property) prior to leaving the country.

58. Because Lilly's assets included artworks—in addition to the Pissarro, she possessed a Jacob van Ruysdael landscape, an Ernst Barlach sculpture, a Renoir lithograph, and a Degas bronze ballerina, among other objects—she was required to submit these works for inspection. The Foreign Currency Office turned to the Reich Chamber for the Visual Arts (a Nazi state agency), which tasked a local Munich art dealer and Nazi Party member named Jakob Scheidwimmer to perform the appraisal. The process, which Nazi art dealer Jakob



*Appendix I*

Scheidwimmer helped carry out, was conceived by the Nazis to strip Jewish émigrés of their assets. Under the punitive Reich Flight Tax in 1939, Jews were permitted to take only 10 Reichsmarks in real money with them.

59. Lilly followed the Nazi mandated procedure for obtaining an export permit for the *Rue Saint-Honoré* but was not allowed to take it with her when she left Germany. Instead, it was stolen from her via a forced sale. Lilly received no compensation for the Pissarro; she was nominally paid 900 Reichsmarks, which was paid into a blocked account she could not access. Soon after the war, Lilly pursued the recovery of the *Rue Saint-Honoré*. She wrote to the German Central Registry Office (Zentral-Anmeldeamt) in Bad Nauheim on 15 December 1948, *see* Ex. 409, and engaged a German attorney, Siegfried Neuland, following the war. She also filed a restitution claim in a timely manner, another sign that she cared deeply for the work, and pursued that claim for years in litigation. The theft of the Painting was ultimately confirmed, as was Lilly's ownership, and reported on by the United States Military Court of Restitution Appeals (CORA), a compendium of restitution decisions used as a reference guide often consulted by restitution experts and provenance researchers.

## **J. SCOPE AND SIGNIFICANCE OF NAZI ART LOOTING**

60. The scope of Nazi art looting in Europe in the lead up and during World War II was so expansive that it is impossible that sophisticated art collectors like the Baron and TBC were not intimately familiar with it.

*Appendix I*

61. With that knowledge came presumptions about certain art purchases. Accordingly, any discussion of the Defendants' knowledge about the *Rue Saint-Honoré* and its provenance must include a consideration of knowledge about Nazi art looting more generally.

62. After Adolf Hitler's appointment as German Chancellor on 30 January 1933, it became official policy in Germany to persecute Jews.

63. The Nazi government quickly began introducing a series of policies aimed at the social and professional marginalization, dispossession, deportation, and ultimately, murder of Jews.

64. There were over four hundred laws passed during the Third Reich (1933-1945) that concerned the seizure of Jewish-owned property. See Lucy Dawidowicz, *The War Against the Jews* (New York: Holt, Rinehart and Winston, 1975), 58, 95-106; see also Avraham Barkai, *From Boycott to Annihilation: The Economic Struggle of German Jews* (Hanover: The University Press of New England, 1989); Frank Bajohr, "Aryanization" in *Hamburg: The Economic Exclusion of Jews and the Confiscation of their Property in Nazi Germany* (New York: Berghahn, 2002); Martin Dean, *Robbing the Jews: The Confiscation of Jewish Property in the Holocaust, 1933-1945* (Cambridge: Cambridge University Press, 2008).

65. The atmosphere of duress prior to March 1939, when Lilly emigrated, was palpable and growing increasingly harsh. As indicated above, there is a vast literature on the economic and social marginalization of

*Appendix I*

German Jews after the Nazi seizure of power in January 1933.

66. Key moments for Jews in Germany include their dismissal from the German civil service in April 1933; their loss of citizenship and civil rights with the Nuremberg Laws of September 1935; the forced registration of assets valued over RM 5,000 in April 1938; and finally, Kristallnacht in November of 1938, the “Night of Broken Glass,” a pogrom against Jews throughout Nazi Germany, often referred to as the beginning of the Holocaust..

67. “The Decree for the Reporting of Jewish Owned Property of 26 April 1938,” stated in Article 1 that “Every Jew (Article 5 of the First Regulation under the Reich Citizenship Law of 14 November 1935, RGBl I, 1333), shall report and evaluate in accordance with the following instructions his entire domestic and foreign property and estate on the day when this decree goes into force”; and, more specifically, that Jews must report all property valued in excess of RM 5,000 (Article 3). *See* RGL. 1938, Part I, Page 414 and the International Military Tribunal Document 1406-PS in *Nazi Conspiracy and Aggression*, Vol. III (Washington, DC: USGPO, 1946), 1001-03.

68. In addition to the steadily intensifying economic persecution of Jews, actual violence increased, with the attacks associated with the invasion of Austria in March 1938 (the *Anschluss*) and the violent pogrom of Kristallnacht or “Reichskristallnacht” in November 1938 standing out as watershed events.

*Appendix I*

69. Art theft occurred in every country the Germans occupied in the 1930s and 1940s. It was part of a larger Nazi program of plunder that resonated throughout German society during the war. Historian Frank Bajohr determined that over 100,000 citizens in Hamburg bought looted Jewish property and noted, “From February 1941 to April 1945, there was hardly a day on which Jewish property was not publicly offered and auctioned off in Hamburg.” See Frank Bajohr, “Aryanization” in *Hamburg: The Economic Exclusion of Jews and the Confiscation of their Property in Nazi Germany* (New York: Berghahn, 2002), 278, 279, 291. And that was just one city in Germany; this phenomenon occurred throughout Nazi Germany.

**K. PROVENANCE RESEARCH**

70. Significant to my opinion is the fact that the Baron did almost no provenance research when he bought the Painting, and that TBC intentionally restricted its provenance research in a way that was certain not to provide an additional paper trail documenting its knowledge of the theft of the Painting. To understand the serious ramifications of these decisions, a discussion about provenance research more generally is helpful.

71. It is widely accepted that best practices for both collectors of fine art and museums entails conducting provenance research to determine the ownership history of artworks being purchased or otherwise possessed. At its core, these practices mandate that purchasers use all means reasonably available to determine the ownership history of the artwork they are purchasing.

*Appendix I*

72. These best practices were true both in 1976 when Baron Thyssen-Bornemisza bought the Painting and in the late 1980s and early 1990s, when it was borrowed and later acquired by TBC.

73. The Baron's and later TBC's lack of any meaningful provenance research is troubling given the strong evidence each had (1) the artwork was likely stolen; and (2) the stated provenance history provided by the seller was inconsistent with the evidence the purchaser had available, not to mention common sense and his personal knowledge, e.g., that the Painting had not changed hands, nor left France, between 1899 and 1976. After all, the Baron personally traveled to New York City in 1976 to purchase the Painting from the Stephen Hahn Gallery, so the lack of any explanation of how the Painting was transported from Europe to the U.S. was clear evidence its history was being concealed. See paragraphs 97 and 120 below.

74. As sophisticated collectors, the Baron and TBC would have been aware of both the importance of provenance research and best practices for conducting provenance research when they each purchased the *Rue Saint-Honoré*. They also each had access to leading art researchers and state of the art resources at the time of their respective purchases. For example, Johannes Gramlich noted that the Baron utilized the services of art restorers William Suhr and Marco Grassi beginning in the 1950s. William Suhr headed the Baron's restoration department in Lugano from 1955 to 1966 and thereafter was based in New York, while Marco Grassi headed the

*Appendix I*

restoration department from 1965 to 1985. See Johannes Gramlich, *Die Thyssens als Kunstsammler. Investition und symbolisches Kapital (1900-1970)* (Paderborn: Ferdinand Schöningh, 2015), 319, 372; and Maria del Mar Borobia, “Three Names for a Collection,” in Maria del Mar Borobia, ed., *Museo Thyssen-Bornemisza, Old Masters* (Madrid: Museo Thyssen-Bornemisza, 2009), 29. The Baron also had top-flight curators who advised him, as noted in greater detail in paragraph 138.

75. The best practices for provenance research were communicated in both educational institutions and in books. For the former, the best known course for training museum professional was at Harvard University; conceived by Paul J. Sachs (1878-1965), an art historian who, during and after World War II, also helped with the effort to redress Nazi art looting.

76. The Harvard museum course, which Sachs taught from 1921 to 1948, stressed “connoisseurship”: the specific knowledge of individual works and their history. Karl Meyer, *The Art Museum: Power, Money, Ethics* (New York: William Morrow, 1979), 40-44. Sachs stressed a complete knowledge of an artwork: how it fit into an artist’s oeuvre, its formalist (aesthetic) qualities, and its provenance. Of the 388 students who enrolled in the course over the years, “at least 160 rose to responsible positions in leading art museums. Among his students were future directors of the Metropolitan Museum of Art, the Museum of Modern Art, the National Gallery of Art, the Boston Museum of Art, and the Art Institute of Chicago. For more than a generation he was at the central academic

*Appendix I*

switchboard of an emerging profession.” Meyer, *The Art Museum*, 40-41.

77. Regarding published literature, the following books provided guidance on best practices (they are listed in chronological order of publication): W. G. Constable, *Art Collecting in the United States of America. An Outline of a History* (London, 1964); Association of Art Museum Directors, *Professional Practices in Art Museums* (New York: Association of Art Museum Directors, 1971); American Association of Museums, *Caring for Collections: Strategies for Conservation, Maintenance, and Documentation: A Report on an American Association of Museums Project* (Washington, DC: AAM, 1984); Marie Malero, *A Legal Primer on Managing Museum Collections* (Washington, DC: Smithsonian Institution Press, 1985); and Mary Case, ed., *Registrars on Record: Essays on Museum Collection Management* (Washington, DC: Registrars Committee of the AAM, 1988). This list is by no means exhaustive, but it shows that museum professionals and scholars of museums articulated best practices over the years that stressed the study of a work’s provenance.

78. The American Association of Museums has published a Code of Ethics since at least 1925. It was revised in 1978. (The AAM revised code of 1978 is reproduced as Appendix B in Meyer, *The Art Museum: Power, Money, Ethics*). Ex. 50 at 10–31. This code states, “Each object is an integral part of a cultural or scientific composite. That context also includes a body of information about the object which establishes its proper

*Appendix I*

place and importance and without which the value of the object is diminished. The maintenance of this information in orderly and retrievable form is critical to the collection and is a central obligation of those charged with collection management.” Ex. 50 at 15. The code goes on to say, “Each museum must develop a method for considering objects of this status [the illicit market] for acquisition that will allow it to acquire or accept an object only when it can determine with reasonable certainty that it has not been immediately derived from this illicit trade and its acquisition does not contribute to the continuation of that trade.” Ex. 50 at 16. Later in the document, it reads, “Intellectual honesty and objectivity in the presentation of objects is the duty of every professional. The stated origin of the object or attribution of work must reflect the thorough and honest investigation of the curator and must yield promptly to change with the advent of new fact or analysis.” Ex. 50 at 18. These standards are not unique to museums in America and are instead consistent with the themes set forth in analogous international organizations such as the International Council of Museums (“ICOM”).

79. All of these best practices were summarized by the American Association of Museums in a guide to provenance research: *see* Nancy Yeide, Konstantin Akinsha, and Amy Walsh, *The AAM Guide to Provenance Research* (Washington, DC: American Association of Museums, 2001). This volume discusses longstanding and well-established practices. In the words of the three authors, “the standard methodology for assembling provenance information for a uniquely identifiable work of art,” was long known to art historians and museum professionals.



*Appendix I*

Nancy Yeide, Konstantin Akinsha, and Amy Walsh, *The AAM Guide to Provenance Research* (Washington, DC: American Association of Museums, 2001), 29.

80. The appreciation of the importance of provenance research grew in the post-war period and this found expression in international law in 1970. The UNESCO 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property specifically noted that “cultural institutions, museums, libraries and archives should ensure that their collections are built up in accordance with universally recognized moral principles.” Ex. 48 at 1. While this UNESCO convention applied to a wide range of cultural property, and focused on illegally exported antiquities, it reflected the greater sensitivity generally being applied to provenance-related issues.

81. In sum, the overarching purpose of provenance research, as explained in the educational materials and the literature, is to document the history of ownership and the exhibition history of the artwork. Establishing the ownership history is necessary for a buyer to ensure that good title has been conveyed. A secondary objective obtained is that establishing prior ownership and/or exhibitions by prominent figures in the art world can increase the value of the artwork by, for example, documenting ownership by respected figures in the art world or by inclusion in exhibitions at prominent art museums.

*Appendix I***L. FACTS THE BARON KNEW AT THE TIME HE PURCHASED THE PAINTING CLEARLY DEMONSTRATED IT WAS NAZI LOOTED ART**

82. At the time of his purchase, the Baron knew the following information, which viewed collectively showed without doubt that the Painting was Nazi looted art: (1) the Nazis had engaged in a campaign of persecution against the Jewish people, including a well-documented and universally condemned history of systematic murder and dispossession of assets, including works of fine art; (2) there had been widespread looting of Pissarro's art by the Nazis (3) there was clear evidence that numerous labels had been removed from the verso (back) of the Painting, evidence that its history was being concealed; (4) the Painting had a partial label from the Cassirer Gallery, which not only indicated it was owned by the Cassirers, but that it had been located in Berlin at one time; (5) the seller did not provide any provenance materials that documented any voluntary transfers out of Berlin (where the Cassirer Gallery (the Kunstsalon Cassirer) label showed it had been) or out of France (where it originated), or explain in any way how the Painting had made its way to the United States, where the Baron made his acquisition in 1976; and (6) the financial arrangements surrounding his purchase were dubious.

*Appendix I***i. Sophisticated Art Collectors, Like The Baron And TBC, Were Aware Of The Scope Of Nazi Art Looting And The Importance Of Provenance Research**

83. Post World War II, there was widespread knowledge in the art world of Nazi art looting. This included, for example, memoirs of the “*Monuments Men*” such as: Thomas Carr Howe’s book *Salt Mines and Castles: The Discovery and Restitution of Looted European Art* (Indianapolis: Bobbs-Merrill Company, 1946), and James Rorimer’s book *Survival: The Survival and Protection of Art in War* (New York, Abelard Press, 1950). Also, prior to the Baron’s purchase of the Painting, numerous articles appeared in publications such as *National Geographic*, *The Atlantic Monthly*, *The New Yorker*, and *The New York Times*. See, e.g., John Walker, “Europe’s Looted Art,” in *National Geographic* 89 (January 1946), 39-52; James Plaut, “Loot for the Master Race,” in *Atlantic Monthly* 178/9 (September 1946), 57-63; Janet Flanner, “Annals of Crime: The Beautiful Spoils,” in *New Yorker* 40 (22 February 1947), 31-44; and Milton Esterow, “Europe is Still Hunting its Looted Art” in *The New York Times* (16 November 1964), A1. There was even a well-known feature film, *The Train* (1964), which treated the subject.

84. There were also many books on Nazi art looting published prior to the Baron’s purchase of the Painting, including: Hellmut Lehmann-Haupt, *Art Under a Dictatorship* (New York: Oxford University Press, 1954); David Roxan and Kenneth Wanstall, *The Rape of Art* (New York: Coward-McCann, 1965 [1964 in the

*Appendix I*

U.K.]); and Mattila Simon, *The Battle of the Louvre: The Struggle to Save French Art in World War II* (New York: Hawthorn Books, 1971). There were also books on the subject in German in that same time: *e.g.*, Wilhelm True, *Kunstraub: über die Schicksale von Kunstwerken in Krieg, Revolution und Frieden* (Düsseldorf: Droste, 1957); and Hildegard Brenner, *Die Kunstpolitik des Nationalsozialismus* (Reinbek: Rowohlt, 1963); and in French: *e.g.*, Jean Cassou, *Le Pillage par les Allemands des oeuvres d'art et des bibliothèques à des Juifs de France* (Paris: CDJC, 1947); and Rose Valland, *Le Front d'Art* (Paris: Plon, 1961). Particularly in light of his family's Nazi past, the Baron and his experts would have been aware of the scope of Nazi art looting generally and at least some of this published literature.

85. In my opinion, given his sophistication, family history, and his access to the art world's best experts and resources, the Baron was aware of the massive scope of Nazi art looting and understood that purchasing artwork that had been in Nazi occupied territory required a heightened level of provenance research.

**ii. Suspect Provenance of Pissarro Works**

86. After World War II, all pictures by Camille Pissarro, a French-Jewish painter favored by European Jewish collectors, were immediately of suspect provenance. In other words, simply the fact that the Painting is a Pissarro should have induced those involved in buying and selling the work to conduct more research.

*Appendix I*

87. In part because Pissarro was Jewish himself, and in part because many European Jews supported modern art, Camille Pissarro art was frequently collected by European Jews. Many of those same Jewish collectors were later victims of the Holocaust. In much the same way, many collectors of Max Liebermann, a German-Jewish Impressionist artist closely associated with the Cassirers, were Jewish and had their art stolen by the Nazis. Similarly, many Jewish owners of works by Austrian modern master Egon Schiele had their art taken and were murdered by the Nazis (such that all works by Schiele warrant closer inspection). See Sophie Lillie, "A Legacy Forlorn: The Fate of Egon Schiele's Early Collectors," in Renée Price, ed., *Egon Schiele: The Ronald Lauder and Serge Sabarsky Collections* (Munich: Prestel, 2005), 110-39.

88. To cite several other examples of works by Pissarro plundered by the Nazis, members of the Fischer family, well-known for their publishing house, the Fischer Verlag, had a Pissarro looted from their Vienna home after the Anschluss in 1938 (it was recovered in 2007). See Stefan Koldehof, *Die Bilder sind unter uns. Das Geschäft mit der NS-Raubkunst* (Frankfurt: Eichborn, 2009), 90-114. The Breslau collector Max Silberberg also had a Pissarro Paris street scene of Montmartre from 1897 stolen from him in 1940; the work was returned by the Israel Museum in Jerusalem to the Silberberg heirs in 2002. See [http://artdaily.com/news/67037/Restituted-Impressionist-masterpiece-by-Camille-Pissarro-to-be-offered-at-Sotheby-s#.W\\_Mgt-hKjet](http://artdaily.com/news/67037/Restituted-Impressionist-masterpiece-by-Camille-Pissarro-to-be-offered-at-Sotheby-s#.W_Mgt-hKjet).

*Appendix I*

89. The National Gallery of Art in Washington, DC has a Pissarro, *View of the Louvre*, that was plundered by the Nazi looting agency in France, the ERR (as well as bought and sold by the Wildensteins in the postwar period—in 1949). *See* the website of the National Gallery of Art, Washington, DC, and specifically their section on World War II Provenance Research, at [www.nga.gov](http://www.nga.gov).

90. The recent discovery of the Gurlitt cache in Munich and Salzburg included a work by Pissarro; according to a *New York Times* article from 28 November 2014, the Pissarro work *View of Paris* (1902) is currently in the possession of the Bern Kunstmuseum. Ex. 375. The Director of the Bern Kunstmuseum, Matthias Frehner is quoted as saying, “We ourselves recognize that this is looted art . . . we will do our utmost to arrange for a swift restitution.” Ex. 375 at 1.

91. In addition, there is the case of *Léone Meyer v. Board of Regents of the University of Oklahoma* (U.S. District Court, Southern District of New York, 13 Civ. 3128 (CM)), which involves a Pissarro picture of a shepherdess looted by the Nazis. *See* Ex. 130.

92. Another example is the Pissarro picture *Picking Peas*, that was returned in France to the heirs of Simon Bauer in 2017 (an heir recognized it on the wall of the Musée Marmottan Monet in Paris). *See* Ex. 376.

93. Similarly revealing is the list of works by Pissarro in the compendium of French cultural losses titled “Répertoire des Biens Spoliés en France Pendant la

*Appendix I*

Guerre de 1939-1945” Ex. 60, [Registry of Assets Looted in France During the War of 1939-1945, herein referred to as “Répertoire”]. Ex. 60. This documentation, published by the French Ministry of Culture in December 1947, includes 46 pictures by Pissarro that were looted by the Nazis in France and never recovered. Ex. 60 at 5-16.

94. The first copy of the ‘Répertoire’ was produced and circulated in 1947 through French diplomatic channels to all signatories of the Tripartite Agreement as well as to the governments of neutral countries which might have received property looted from Nazi-occupied France, including Switzerland.

95. To be clear, the works in the ‘Répertoire’ were the works by Pissarro looted *in France* and not yet recovered. *It does not list* works by the artist stolen *in Germany* (like Lilly Cassirer Neubauer’s) or any other country occupied by the Nazis. However, the ‘Répertoire’ is significant because it further shows that works by Camille Pissarro reached a “dubious market” threshold in the aftermath of World War II. (DE 249-23) 3/9/15 Ernst Report, ¶¶ 22-26.

96. In short, all works by Pissarro that may have been in Europe during the Third Reich were of suspicious provenance and therefore required careful scrutiny.

**iii. Physical Inspection, the Cassirer Gallery Berlin Label, and Removal of Labels**

97. The Baron physically inspected the *Rue Saint-Honoré* in New York prior to purchasing it. Ex. 354, Memorandum of Dr. Johannes Gramlich (May-June 2018),

*Appendix I*

fn 6; Ex. 318, Stephen Hahn to Baron Hans Heinrich Thyssen-Bornemisza (27 October 1976).

98. That inspection undoubtedly included an examination of the front and back of the Painting.

99. A review of the back of the Painting is standard practice as it can reveal information about the condition of the art work (e.g., whether the canvas was relined), the authenticity of the piece, and the history of the work (e.g., exhibition record, ownership, etc.). The back of a painting often contains critical information regarding the provenance of the work. In this case, as noted below, the clear removal of numerous labels from the back of the Painting would have been understood by the Baron, and his advisors, the seller and dealer, and any other knowledgeable art collector, as an effort to conceal its history. Pictures of the back of the Painting illustrative of this point are included in Exs. 348 and 379.

100. After purchasing it in New York, the Baron brought the Painting back to Switzerland, where it resided as part of his personal collection. It was kept in the personal quarters on the third floor of his villa on Lake Lugano in Switzerland, notably in the dressing room of his master bedroom suite. Ex. 327 (1988 *Architectural Digest* article) at 97; Ex. 190 at 5 (painting in “Bed Room”). The Painting was not in the Baron’s gallery, which was opened to the public at certain times.

101. I was able to conduct a physical inspection of the painting in the conservation laboratory of the Museo Thyssen-Bornemisza on 22 September 2014. The



*Appendix I*

conservation experts of the museum removed the painting from its frame and allowed me to inspect both the Painting and the frame (front and back), and to take photographs. Exs. 348 and 379 constitute excerpts of the photographs that I took during the physical inspection.

102. The photographs accurately reflect conditions that I observed during the inspection. I am aware that TBC and the Baron had access to the physical conditions I observed because TBC produced documents in this case reflecting the physical condition of the Painting. These documents include images of its frame and the labels on the back (including the label reflecting the Painting's tie to Berlin and the Cassirer Gallery). These images also indicate that other labels had been removed. *See* Ex. 217 (1992 Conservation Report).

103. During my inspection, a TBC conservator observed that the physical condition of a painting reveals its history. I agree. The physical condition of the *Rue Saint-Honoré* reveals a great deal about its history.

104. It is my opinion that the canvas of the Painting is original and that it has not been relined. The presence of the stamp of P. Contet, who provided the canvas and apparently placed it on the stretcher bars, provides one key clue in this regard. *See* Ex. 379 at 3–4.

105. It is also my opinion that the frame is the one associated with the painting at the time when it was in the possession of the Cassirer family. On the inside edge of the painting, the name “Julius” appears to be

*Appendix I*

inscribed in pencil. *See* Ex. 348 at 5. I believe that this is likely a reference to Julius Cassirer—an early owner of the Painting and father of Lilly’s husband Fritz. It is possible, although less likely, that the reference is to Julius Sulzbacher, who obtained the Painting from Scheidwimmer.

106. There are certain labels and notations that remain on the reverse of the picture. There are two fully intact labels: one from an “Australian Tour” of 1979-1980 when the Baron sent part of his art collection for exhibition, and a small red-bordered label. Ex. 348 at 9; Ex. 379 at 8. The red-bordered label at the bottom of the frame contains the numbers “8215,” but no further inscriptions. Ex. 379 at 8.

107. Significantly, there remains a visible, partial label from the Cassirer Gallery or “Kunstsalon Cassirer” in Berlin. One can see clearly the word Berlin and the start of an address, which reads “Vict...” (as well as half of the letter “o” that follows). The Cassirer Gallery was located on fashionable Victoriastrasse in Berlin. The words “Kunst – und – Ve...” are also visible, referring to the German for “art and publishing establishment” (“Kunst und Verlagsanstalt”) as the Cassirer Gallery for a time also included a prominent art publishing house. A picture of the Cassirer label is shown in Ex. 348 at 3–4.

108. This partial label is consistent with the text of a label found on another French Impressionist painting (by Claude Monet) once held in the Kunstsalon Cassirer described in Ex. 116, *Masterpieces of Impressionism and Post-Impressionism: The Annenberg Collection*,

*Appendix I*

*Metropolitan Museum of Art* (New York: Metropolitan Museum of Art, 2009), 69 (note 33). The text of that label, as described in the Annenberg book, reads: “Bruno u. Paul Cassirer/Kunst – und Verlagsanstalt / Berlin W., Victoriastrasse 35.”

109. The partial label affixed to the back of the Painting clearly traces the provenance of the Painting to Berlin and to the Cassirer Gallery there specifically. The fact that the label combines both the art gallery and the publishing house leads me to believe that the label dates from the early years of the Cassirer enterprise in Berlin: the cousins, Paul and Bruno, had a falling out in 1901 and separated the gallery and the publishing house, with Bruno moving to a nearby address (Derfflingerstrasse 15). I would therefore date this label to between 1899, when Paul Cassirer first exhibited the picture, and 1901.

110. The location of the Painting in Berlin, and specifically in the Cassirer Gallery there, alerted the Baron and TBC to the Painting’s dubious provenance. There is no evidence that would indicate that the Baron or his experts inquired about the Cassirer Gallery label from Berlin or requested any kind of explanation of how the Painting moved from Germany to the United States.

111. Moreover, the Baron had specific knowledge of the Cassirer Gallery. In fact, at least 20 of the pieces in the Collection sold by the Baron to TBC traced their lineage to, or otherwise reference, the Cassirer Gallery in Berlin, and these connections are specifically referenced on the TBC website today. *See* Ex. 368. The curators who

*Appendix I*

signed the current catalogue entries, Paloma Alarco and Maria del Mar Borobia, served as curators for TBC at the time it acquired the Cassirer's Pissarro in 1992-93. They also co-authored the original "Masterworks" book accompanying the permanent collection of the Thyssen-Bornemisza Museum with now retired artistic director Tomas Llorens. It is inconsistent with the evidence for TBC to now contend that it was unaware that the Cassirer Gallery label, from Victoriastrasse in Berlin, Germany, indicated a previous connection of the Painting to the famous Cassirer family in Berlin that required further provenance research.

112. For example, on its website, TBC describes pieces in its Collection as coming from "Paul Cassirer's prestigious Berlin Gallery." Ex. 368 at 1. Further, this description of the Cassirer Gallery in Berlin is contained in TBC's bio of Max Beckmann in its provenance description of four of Beckmann's artworks in the Thyssen-Bornemisza Collection per TBC's own website. Similarly, TBC's provenance descriptions for the following works discuss the Cassirer Gallery, including purchases directly from the Cassirer Gallery by the Baron's father: (i) Max Liebermann's *Boy and Girl on a Village Street* (Ex. 368 at 5) (describing "the Galerie Cassirer founded at the same time as the Secession in Berlin"); (ii) Claude Monet's *Charing Cross Bridge* (Ex. 368 at 9) (discussing a sale to "German dealer Paul Cassirer"); (iii) Master of the View of Saint Gudule's *Clothing the Naked* (Ex. 368 at 12) ("auctioned with this attribution by the Paul Cassirer Gallery in Berlin"); (iv) Lovis Corinth's *Fashion Show* (Ex. 368 at 14) (discussing first exhibition at "the Paul

*Appendix I*

Cassirer Gallery, with which he remained connected in the following years”); (v) Kirchner’s *Franzi in front of Carved Chair* (Ex. 368 at 18) (in discussing history of another artist, Matisse, it states his “work was shown at the Galerie Cassirer in Berlin”); (vi) Christian Rohlf’s *Garden in Soest* (Ex. 368 at 20–21) (discussing “major international exhibition of van Gogh’s work ... organised by Berlin dealer Paul Cassirer in collaboration with the artist’s sister-in-law”); (vii) Erich Heckel’s *House in Dangast* (Ex. 368 at 23) (stating that “Matisse, too, was known in Germany by 1909 at the latest, in part through his exhibition at Cassirer’s in Berlin”); (viii) Joachim Patinir’s *Landscape with the Rest of the Flight into Egypt* (Ex. 368 at 26) (“auctioned at Paul Cassirer”); (ix) Aert van der Neer’s *Moonlit Landscape with a Road beside a Canal* (Ex. 368 at 29) (“While it was in Berlin the panel was included in an exhibition held at the Paul Cassirer Gallery”); (x) and (xi) Master of the Monogram TK’s *Portrait of a Man (Georg Thurzo?)* and *Portrait of a Woman (Anna Fugger?)* (Ex. 368 at 33, 36) (“They were included in an exhibition held at the Paul Cassirer Gallery in Berlin . . .”); (xii) Andrea Solario’s *Portrait of a Young Man* (Ex. 368 at 39) (“entering the Thyssen-Bornemisza collection in 1928 via the Paul Cassirer Gallery”); (xiii) Cornielle De Lyon’s *Portrait of Robert de la Marck, 4th Duke of Bouillon* (Ex. 368 at 42) (“entering the Thyssen-Bornemisza collection in 1928 via the Paul Cassirer Gallery”); (xiv) Gerard David’s *The Crucifixion* (Ex. 368 at 45) (the work was “in the hands of the Paul Cassirer Gallery in Berlin and entered the Thyssen-Bornemisza collection at the Villa Favorita in 1928”); (xv) Vincent van Gogh’s *The Stevedores in Arles* (Ex. 368 at 49) (“it was

*Appendix I*

included in several exhibitions organised by Paul Cassirer in Germany”); (xvi) Otto Müller’s *Two Female Nudes in a Landscape* (Ex. 368 at 51) (discussing “an exhibition at the Galerie Paul Cassirer in Berlin”).

113. There are also numerous partial labels on the back of the Painting (see, for example, Ex. 348 at 6; Ex. 379 at 1, 5. I cannot state with absolute certainty when or by whom the labels were removed (or how they came off), but it is my opinion that at least some of the labels were removed intentionally.<sup>6</sup> If one looks at the image included in Ex. 379 at 5, one sees a label that has been mostly peeled away. Here one can see the number “38” and what appears to be an “E,” but the rest of the information has been obscured. Ex. 379 at 5.

114. In my opinion, the presence of partial labels reveals the absence of labels that clearly once existed (but were removed). This reflects a large number of transfers and/or exhibitions of the Painting, none of which were included in the provenance history apparently given to the Baron and later sponsored by him and TBC. When a master work of art goes to a gallery or to an exhibition, the establishment places a label on the verso (back) of the work, which serves as an important reference for provenance purposes. *See* Ex. 374. There is no legitimate reason to tear off these labels as they serve the dual purpose of fortifying an artwork’s authenticity and increasing its value. The removal of such labels is like

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6. The conservation experts at the Thyssen-Bornemisza Museum stated that the only change they made to the Painting was to add protective glass to cover the actual picture.

*Appendix I*

filing off the serial number on a stolen gun – clear cause for concern.

115. It is well-known that the Nazis were meticulous about documenting their activities, and this applies to many of the artworks they seized. *See, e.g.*, Kai Ambos, *III Treatise on International Criminal Law* 167 & n.659 (2016). Ambos notes that the Nazis kept such meticulous records “victims were not needed as witnesses” and thus at “least 90% of the evidence presented at the Nuremberg trials consisted of the Nazis own written records.” *See also* Anne Bothwell, *More Documentation of Nazi Stolen Art Revealed* (March 27, 2012), <http://artandseek.org/2012/03/27/more-documentation-of-nazi-stolen-art-revealed/>. She writes that “The Nazis kept meticulous records of artwork stolen from homes across Europe.” Of course, most post-war sellers of Nazi-looted art would remove such potentially incriminating labels before showing the work to prospective buyers. But intact labels certainly once would have been visible on the back of the Painting.

116. The evidence of the removal of labels on the back of the Painting is also inconsistent with the provenance history sponsored by the Baron (and later by TBC) after his purchase of the Painting. In fact, the provenance history sponsored by the Baron (and later TBC) was minimal and showed no transfers or exhibitions after 1899. This further shows that the stated provenance of the Painting was not accurate. The later sponsorship of this obviously incomplete and inaccurate provenance history is troubling.

*Appendix I*

117. Perhaps most surprisingly, even though the provenance history of the Painting is now largely known and its theft by the Nazis is not disputed by TBC, the TBC website shows no provenance history for the *Rue Saint-Honoré*. Though TBC brandishes the Cassirer Gallery connections for at least 20 other paintings to enhance their prestige and value to TBC, and gives provenance history for many of the works in the Collection, it has chosen to completely ignore the provenance history of the *Rue Saint-Honoré* on its website.

118. It bears mentioning that the removal of labels can violate the Art Dealers Association of America (ADAA) Guidelines Regarding Art Looted. During the Nazi Era, a set of principles and best practices issued in 1998. Point 5 of the Guidelines reads, “If a dealer is presented with evidence that a work he or she previously sold may have been looted, the dealer should endeavor to make available any records which may serve to clarify the history of the work in question.” Ex. 378 at 4. To remove a label would be to destroy evidence that a work may have been looted.

**iv. Absence of Provenance Records**

119. As stated above, the presence of partial labels, the removal of at least a dozen labels, and the complete lack of provenance for 70-plus years before the Baron’s purchase, was proof that the provenance history sponsored by the Baron after his purchase was not correct.

120. In fact, the Stephen Hahn Gallery provided no meaningful provenance information to the Baron in the



*Appendix I*

sales agreement of 18 November 1976. The documents that TBC has identified as relating to the Baron's acquisition of the *Rue Saint-Honoré*, do not contain any provenance information for the entire twentieth century. Exs. 72, 169. Stephen Hahn merely listed two exhibitions at the Durand-Ruel Gallery in Paris in 1898 and 1899. In other words, the Baron purchased the Painting with no provenance research or documentation accounting for the whereabouts of the Painting between 1899 and 1976.

121. There is no legitimate explanation for this gap of the provenance history provided to the Baron (which we now know is false) and all the evidence the Baron had at the time of the purchase demonstrated that the provenance history he was given was incomplete and inaccurate.

122. Any doubt that the Baron knew he was entering into an illicit transaction is removed by the fact that almost immediately following his purchase, the Baron himself falsified and further obfuscated the provenance history by misstating where he personally had purchased the *Rue Saint-Honoré* only days before.

123. Specifically, the Baron claimed that he bought the Painting in Paris at the Galerie Joseph Hahn, even though he had just purchased it from the Stephen Hahn Gallery in New York. When asked about possibly confusing the two galleries, art historian Claire Durand-Ruel Snollaerts stated, "I really do not want to write false information in the provenance of this painting. The two dealers are very different people. They are two distinct galleries." Ex. 143 at 18. The effect of this was to remove any evidence of the

*Appendix I*

*Rue Saint-Honoré* ever having been in the United States and, more importantly, to suggest it never left Paris where it was created by Pissarro.

124. On the very day he received his invoice from the Stephen Hahn Gallery in **New York**, Ex. 320, the Baron directed his employee to record falsely that the Painting had been purchased from the “Galerie Hahn” in **Paris**, France; and that the Painting was being “stored in a safe in Paris.” Ex. 322. The Baron’s employee knew this was untrue (he had the New York invoice at hand) and appears to have attempted to protect himself by writing that the false information had been provided by “H.HTB” – the Baron himself. Ex. 322. This is a clumsy and transparent attempt to try to cleanse or wash away the illicit provenance of the work.

125. TBC appears to suggest that, since all four of the Baron’s November 1976 purchases from Stephen Hahn in New York were erroneously stated to have come from the Galerie Joseph Hahn in Paris, it can somehow be excused as a simple mistake or clerical error, and not an attempt to hide the provenance of the Pissarro.

126. Any type of “mistake” theory appears weak when one compares the document stamped “EINGANG 22. Nov. 1976” [Arrival 22 November 1976] (Ex. 320), which is the cover letter for Stephen Hahn’s invoice (Ex. 72), with the 22 Nov. 1976 ledger entry stating that the Pissarro had been acquired from the “Galerie Hahn, Paris” and was being stored in a “safe in Paris” (Ex. 322). That is, a false entry was made the same day the New York invoice arrived in 1976.

*Appendix I*

127. Furthermore, one of the other pictures purchased by the Baron that same day was a \$1.5 million Cézanne, one of the most expensive works in the Baron's collection. In a later interview, the Baron is quoted as saying of this Cézanne, "I neither remember where nor from whom I bought it, nor any story related to it, only that I always wanted to have a Cézanne and I believe I bought it in Paris." Ex. 343 at 314. That seems an obvious lie. It was a \$1.5 million purchase after a personal visit by the Baron to the New York gallery in Manhattan, a purchase discussed in several letters between the Baron and Hahn. *See* Exs. 318–320 ("If there is someone who has the authority to enter the room which the Baroness rented at Manhattan Storage, then I could send both paintings to the room and they could be stored with the CEZANNE which is already there.")

**v. The Financial Circumstances Surrounding the Baron's Purchase of the Painting Lend Further Support for My Opinion that he knew he was buying Nazi looted art**

128. I have read the report of William H. Smith dated April 8, 2015, who has opined that this Painting should have cost the Baron between \$510,000-600,000 USD when he purchased it from the Stephen Hahn Gallery in 1976. The Baron paid \$275000, far below that amount. Joint Proposed Stipulation of Facts (DE 377) at 55, ¶ 26.

129. Moreover, in addition to this price disparity, Stephen Hahn directed the Baron to make his payment for the commission on this Painting to an account in Switzerland, a well-known haven for money laundering.

*Appendix I*

130. Payment for other Paintings the Baron was buying at the same time from Stephen Hahn were likewise directed to a Swiss bank account controlled by a Liechtenstein foundation: known as Art Council c/o Heussler & Cie and the Art Council Establishment Vaduz. *See* Ex. 49 at 2 (Stephen Hahn to Baron Hans Heinrich Thyssen-Bornemisza (21 April 1977); and Ex. 72 at 3 (Bill for Commission of \$25,000 for Pissarro's *Rue St. Honoré* (21 April 1977)). In October/November 1976, the Baron bought four paintings from Stephen Hahn: besides acquiring the Pissarro *Rue St. Honoré* (\$300,000), he bought works by Cézanne, (\$1.5 million), Leger (\$150,000) and Corot (\$75,000). The payments rendered for the first three went to an entity called Art Council c/o Heussler & Cie. The commission for the Pissarro (\$25,000) also went to the Swiss bank account of the Liechtenstein entity. *See* Ex. 319 (Stephen Hahn to Art Council (5 November 1976)).

131. These directions are not consistent with an above-board, purchase of legitimate art in New York City. They instead are further indication that the entire Baron/Stephen Hahn transaction was dubious.

132. The financial circumstances surrounding the Baron's purchase of the Painting constitute further evidence that the Baron knew that he was acquiring stolen art.

*Appendix I***M. THE ACTIONS AND OMISSIONS OF THE BARON  
FURTHER SHOW HE HAD KNOWLEDGE THE  
PAINTING WAS NAZI-LOOTED ART**

133. Given the facts and circumstances outlined above, a review of what the Baron did and did not do at the time of and following his purchase of the *Rue Saint-Honoré* is revealing and bolsters my opinion that he knew the Painting was stolen.

134. On the one hand, the Baron did none of what one would expect a knowledgeable buyer to do who wanted to know the provenance of a painting.

135. On the other hand, and perhaps even more damning, are the actions the Baron took to conceal the provenance of the Painting.

136. Taken together, it is my opinion that the Baron knew the *Rue Saint-Honoré* was Nazi looted art at the time he purchased it. At a minimum, he knew the provenance history was incomplete and inaccurate, and that the Painting's presence in Germany and its location during the Nazi regime were not accounted for, and he turned a blind eye to obtaining an accurate provenance history.

137. Provenance research involves incremental steps, moving from one piece of information to another. There is no evidence that the Baron or his experts even attempted to initiate an inquiry into the provenance of the *Rue Saint-Honoré*.

*Appendix I*

138. According to a publication from the Thyssen-Bornemisza Museum, the Baron had world class experts advising him. See Maria del Mar Borobia, “Three Names for a Collection,” in Maria del Mar Borobia, ed., *Museo Thyssen-Bornemisza, Old Masters* (Madrid: Museo Thyssen-Bornemisza, 2009), 26-29. In this essay, Maria del Mar Borobia writes, “Over the years a series of curators and directors worked in the Villa Favorita. Rudolph Heinemann was succeeded by Sándor Berkes, followed by Gertrude Borghero, Simon de Pury, Irene Martin and Maria de Peverelli . . .” *Id.* at 29. These experts included some of the most prominent art collectors and curators in the world. For example, Simon de Pury is a renowned Swiss art dealer and collector, as well as a co-founder of Phillips de Pury & Co., one of the largest auction houses in the world. See [http://en.wikipedia.org/wiki/Simon\\_de\\_Pury](http://en.wikipedia.org/wiki/Simon_de_Pury). Maria de Peverelli is a well-known gallery director and scholar who has curated exhibitions in Switzerland, Russia, China, and the United States; she “publishes and lectures regularly on topics that range from museology to sixteenth century art history.” See <http://www.spoke.com/people/maria-de-peverelli-3e1429c09e597c1003f462a7>. Maria del Mar Borobia also lists the conservations experts who attended to the works in the collection. In other words, a highly distinguished cohort of experts worked for the Baron, and these experts presumably had the skills and knowledge to undertake a serious investigation. But they evidently did not even try nor were they asked to do so by the Baron.

139. The Baron failed to adhere to the best practices or even the minimum standards with regard to provenance

*Appendix I*

research. For example, despite having some of the world's most prominent curators and conservation experts at his disposal, there is no evidence that the Baron obtained any explanation for the partially removed Cassirer Gallery label from Berlin or the gaps in provenance history (particularly in explaining how the Painting was exported out of Germany after World War II). In fact, there is no evidence that the Baron did anything to confirm the highly suspect provenance claims by Stephen Hahn. The only thing certain is that the Baron took affirmative acts that further obfuscated the provenance of the Painting. (see discussion above).

140. I understand that there is no dispute in this case (and nor should there be) that the Painting was stolen from Lilly Cassirer by the Nazis in 1939.

141. However, based on my review of previous Declarations filed by TBC's art experts in this case, I understand that TBC has taken the position that the accurate provenance history was somehow unknowable to the Baron in 1976.

142. As set forth above, before he purchased the *Rue Saint-Honoré*, the Baron knew based on his own inspection, and his familiarity with the Cassirer Gallery, that the Painting had at one time been in the well-known Cassirer Gallery in Berlin.

143. Also, when he purchased the Painting, the Baron had been given no information documenting the Painting's time in Germany, let alone how it made it out of France, or

*Appendix I*

to the United States generally and to the Stephen Hahn Gallery in particular.

144. Nevertheless, there is no evidence that the Baron conducted any meaningful provenance research. This demonstrates an attempt to avoid receiving actual, additional documentation about the Painting's history, i.e., without the accurate provenance, and a willingness to proceed with the purchase of the Painting notwithstanding all indications were that it was stolen.

145. There were numerous avenues a buyer in the Baron's position, who wanted to know the provenance of the Painting, would have taken.

146. There were both private and governmental resources available to the Baron and his art experts and advisors that would have revealed that the Painting was Nazi looted art.

147. Those are discussed below. However, the guiding principle according to widely accepted art provenance research standards is that, given what the Baron knew, all available sources needed to be consulted, and all leads tracked down. Some of those sources and leads are discussed below.

148. At the time of his purchase, one of the art experts with whom the Baron had a relationship was John Rewald (1912-1994).



*Appendix I*

149. Rewald was a noted scholar of Pissarro, who had published on the artist from 1936 onward. He authored dozens of articles and books that explored Pissarro and his works, as well as many other volumes on Impressionist and Post-Impressionist painting. *See, e.g., Ex. 371.*

150. John Rewald was also an active and visible figure in the art trade. According to the *Dictionary of Art Historians*, “He advised wealthy collectors like John Hay Whitney and Paul Mellon on purchases both to their private collections and donations to art galleries.” *See* <https://dictionaryofarthistorians.org/rewaldj.htm>. He received a lifetime achievement award in 1983 from the Art Dealers Association of America. *See* <http://www.nytimes.com/1994/02/03/obituaries/john-rewald-81-expert-on-art-of-post-impressionist-period-dies.html>. Rewald also served as a member of the board of trustees at the International Foundation for Art Research from its inception in 1968 until his death in 1994.

151. Rewald was a close personal friend of Camille Pissarro’s fourth son, Ludovic Rodo Pissarro (“Rodo”). Rodo was the godfather of Rewald’s son, and Rewald dedicated his book entitled *Camille Pissarro (1830-1905)* to Rodo’s memory. Exs. 312, 372. During his life, Rodo compiled an extensive archive with the provenance of each of his father Camille’s works. Rewald inherited Rodo’s archive when Rodo died in 1952. Exs. 342, 326 at 2. After Rewald’s death in 1994, the Wildenstein Institute purchased the archive. Stein Dec. (DE 271-5) at 29.

*Appendix I*

152. The Rodo-Rewald archive, specifically the *Rue Saint-Honoré's* archival photo and index card, show explicitly that the Painting had been stolen from Lilly Cassirer Neubauer (“Lilly”) during the war. To be clear, the notation on the card states unequivocally that the Painting “was stolen from Mrs. Lilly Neubauer (precisely, during the war in Germany)” or in French, “été volé à Madame Lilly Neubauer (juste, pendant la guerre en Allemagne).” Ex. 369.

153. Lynn Nicholas, an expert retained by TBC, acknowledges that “According to Mme. [Claire Durand-Ruel] Snollaerts the document had been in the private archive of Ludovic Pissarro, who died in 1952. This archive subsequently came into the possession of John Rewald . . . .” DE 271-4 ¶ 28.

154. Rewald thus had the information about the Nazis’ theft and the link to Lilly long before the Baron’s purchase.

155. In July 1976, Rewald visited the Baron’s collection at the Baron’s home in Switzerland. Ex. 170. Just three months later, in October 1976, the Baron was in New York at the Stephen Hahn Gallery looking at and later buying the Painting. Exs. 49, 72, 196, 318, 319. Rewald lived in New York, just 11 blocks from the Stephen Hahn Gallery. See Exhibit A (map of area near gallery). Despite the easy access to Rewald, and Rewald’s recent visit to Villa Favorita, there is nothing to suggest that the Baron or his staff made any effort to contact Rewald at the time of the 1976 purchase. Had they done so, they would have seen in writing that the *Rue Saint-Honoré* was Nazi-looted art.

*Appendix I*

156. The only reason for the Baron not to consult with Rewald about a Pissarro he was buying is that the Baron already knew the Painting was stolen, and did not want that information exposed to third parties.

157. In summary, Rewald was both a recognized expert on Pissarro and an accessible figure for dealers, collectors, and museum officials. Contacting Rewald would have easily revealed that the Painting was stolen property and that the provenance of the Painting given to and later sponsored by the Baron was incomplete and inaccurate.

158. For someone conducting provenance research in New York, a logical starting point would have been The Frick Art Reference Library (“the Frick”), which was located only three blocks away from the Stephen Hahn Gallery in Manhattan (even closer than Rewald’s home). *See Exhibit A (map).*

159. The Frick has been in existence since 1920 and is well known to individuals in the art world. At the time of the Baron’s purchase of the Painting, it was the leading art library in the United States. Research there would have revealed numerous secondary sources to review to ascertain the provenance of the Painting. Notably, research at the Frick would have alerted the Baron and/or his staff that the Painting had been in the possession of Sidney Shoenberg, even if for some reason Stephen Hahn had refused to reveal the name of his client (a refusal that would itself be highly suspicious, in light of the removed labels, the partial Cassirer Berlin label, and the other circumstances discussed above).

*Appendix I*

160. There is no evidence that the Baron, his employees or his consultants conducted any research regarding the Painting at the Frick.

161. Another easy path to Rewald would have been through the Wildensteins, the art dealers based in Paris and New York, who were widely known to have a vast archive with information on previous Pissarro owners. The Wildensteins, for example, organized a major loan exhibition that ran from 25 March to 1 May 1965, *Camille Pissarro* (New York: Wildenstein, 1965).

162. John Rewald and the Wildensteins had very close relations. A 17 April 1992 article by Carol Vogel in the *New York Times* about a painting attributed to Georges Seurat stated, “According to court papers, at the time [circa 1987 that] Mr. Gumowitz [the plaintiff in the case] bought the painting from Wildenstein, Mr. Rewald independently authenticated the work. Mr. Gumowitz now says that Mr. Rewald had been engaged by Wildenstein and had received a commission from the gallery. Mr. Rewald is ill and could not be reached for comment.” *See* Ex. 91. Regardless of whether Mr. Gumowitz’s allegation about Rewald receiving a commission is true, the episode shows how John Rewald was widely known for helping research artworks as part of commercial transactions and how he had a relationship with the Wildensteins. *See also* Ex. 315 (1975 letter from Wildenstein Institute to Rewald).

163. Had the Baron inquired about the Painting with the Wildenstein Institute, it is very likely that he would have been referred to John Rewald. Of course, the Baron

*Appendix I*

could have gone to John Rewald directly, as many others did, particularly since Rewald lived within walking distance of the Stephen Hahn Gallery and the Baron and/or his staff already knew Rewald from his July 1976 visit to the Baron's home in Switzerland.

164. Indeed, thirteen years after the Baron purchased the Pissarro in New York, he and his staff purported to turn to John Rewald to help study the Baron's collection of Impressionist and Post-Impressionist pictures, *Rue St. Honoré* included. Irene Martin, then Administrative Director and Curator of the TBC, wrote to John Rewald in March 1989 inviting him to write the catalogue and curate an exhibition at the Villa Favorita. Rewald responded that he had too many other commitments and declined the invitation. *See Ex. 210* (Irene Martin to John Rewald (21 March 1989), and Rewald's response (13 April 1989).

165. These documents raise questions, not all of them answerable. They show that the Baron and his experts did recognize the expertise and standing of John Rewald. As noted above, Rewald was already a noted authority on Pissarro before 1976 and had visited the Baron's collection just three months before the Pissarro was purchased. So, what changed in the intervening thirteen years that induced the Baron to approach Rewald? One thing is that the TBC's false story that the Painting had been purchased at Galerie Joseph Hahn had held up for over a decade.

166. The Baron also had a pattern of claiming not to know where his art had come from. For example, in 1972

*Appendix I*

when indicted for smuggling art out of Italy, he said “I buy the stuff in Switzerland and the United States, but how it gets here I don’t know. I can’t check all that.” Exs. 367, 373. The Baron noted in a 1987 interview, “It [buying art] is always kind of a gamble. I don’t gamble in casinos, but collecting art is not so different from business. You don’t really know what will happen the day after tomorrow.” Johannes Gramlich, *Die Thyssens als Kunstsammler. Investition und symbolisches Kapital (1900-1970)*, at 339 (Paderborn: Ferdinand Schöningh, 2015).

167. The Baron must have assessed the risks in 1989 and approved the approach to John Rewald. However, after Rewald declined the invitation and questioned how the Baron was documenting the Painting, the Baron made no further inquiries to Rewald and instead engaged Sarah Whitfield, who completed the volume in December 1990. This study offered no recognition of the Painting’s true Cassirer provenance. *See* Ex. 213 at 3 (Sarah Whitfield, *Impressionism and Post-Impressionism in the Thyssen-Bornemisza Collection* (Madrid: TBC, 1990)).

168. I have reviewed the Declaration of Evie Joselow from the Commission for Art Recovery (CAR) and the provenance information she obtained from the Wildenstein Institute in November 2000. It is striking that this November 2000 letter contains a reasonably complete provenance for the Picture: one that lists Lilly Cassirer Neubauer, the Hans Lange sale of 1943, M. Knoedler & Co., and Baron von Thyssen-Bornemisza, among others. *See* Ex. 55. However, its recitation of the recent history, undoubtedly obtained from TBC, incorrectly listed the

*Appendix I*

Baron's purchase in 1976 as having been from the Galerie Joseph Hahn in Paris. It is also noteworthy that when the Commission for Art Recovery of the World Jewish Congress contacted the Wildenstein Institute about the Painting, the Wildenstein Institute promptly disclosed their knowledge that the Painting had been in the Cassirer family for generations and had been stolen from Lilly Cassirer -- "stolen to her" [sic] is the precise phrasing, but the meaning is clear. *See* Ex. 55.

169. At a minimum, before he acquired the painting in 1976, Baron von Thyssen-Bornemisza and his experts should have contacted the Wildensteins and/or The Wildenstein Institute. This was a component of the initial research carried out by the Commission for Art Recovery, and as the above-cited document shows, the Wildenstein Institute proved responsive. The apparent failure by Baron von Thyssen-Bornemisza to consult the Wildensteins likely demonstrates that the Baron had already concluded that the Painting was looted – at a minimum, is shows a determined desire to not find out.

170. Another source the Baron should have pursued was the United States State Department.

171. At the time he purchased the *Rue Saint-Honoré*, the State Department had an extensive archive called the "Records Maintained by the Fine Arts and Monuments Adviser 1945-1961 (a/k/a "Ardelia Hall Collection" named after the State Department official most responsible for the compilation). In 1976, custody and responsibility for that archive had been transferred to Ely Maurer after Ms. Hall's retirement in 1964.

*Appendix I*

172. Ely Maurer had been “one of the lawyers who had served her in her work [before] her area of activity fell to [him],” and he held the post throughout the 1970s. *See* Ely Maurer, “The Role of the State Department Regarding National and Private Claims for the Restitution of Stolen Cultural Property,” in Elizabeth Simpson, ed., *The Spoils of War* (New York: Abrams, 1997) (“Maurer”). Like Ardelia Hall, Maurer kept track of restitution proceedings (especially in Europe and the United States) and responded to inquiries from interested parties.

173. Maurer recalled that Ardelia Hall “sent the circular [a 23 February 1947 Department of State Bulletin warning of looted artworks entering the United States] to museums, university art faculties, and art dealers, advising them to be on the alert for cases of possible looted property and exhorting them to report such cases to the government.” Maurer, at 143; *see* Ex. 311 (State Dept. bulletin re: looted art).

174. The State Department had its own archive which contained extensive materials concerning Nazi art looting and restitutions. These papers have been transferred to the National Archives and Records Administration and are one of the most important sources on this subject.

175. Notably, the State Department was a direct source from which one could easily obtain decisions of the Court of Restitution Appeals (CORA), including the CORA decision which documented the theft of the Painting from Lilly Cassirer in 1939. The State Department either had the compendium of CORA decision reports immediately on hand or had ready access to them (including the



*Appendix I*

1954 published CORA), and most likely also contained considerable additional material.

176. The Court of Restitution Appeals (CORA) within the U.S. High Commission for Germany clearly identified the Picture in footnote 1. *See* Ex. 23 n.1 (TBF 001967). Specifically Footnote 1 of the CORA opinion expressly identifies the Pissarro as “View of Rue St. Honoré in the Rain.” Thus, the CORA decision would have revealed the precise work by Pissarro, the View of Rue St. Honoré in the Rain, and that it was the subject of a forced sale in 1939.

177. The CORA decision specifically identifying Lilly’s claim to the Painting (by name) is described in the compendium of CORA decisions, which was cited in the 1974 study on Allied restitution laws by Walter Schwarz. Ex. 314, *Rückerstattung nach den Gesetzen der alliierten Mächte* [Restitution According to the Laws of the Allied Powers] (Munich: C. H. Beck, 1974). The publisher, I might add, is one of the most prestigious in Germany. The book was also reviewed in English language periodicals, including by the well-known prosecutor from the Nuremberg Military Tribunal, Benjamin Ferencz. Ex. 316, “Review of Walter Schwarz, *Rückerstattung nach den Gesetzen der alliierten Mächte*,” in *The American Journal of Contemporary Law*, vol. 23 (2) (1 April 1975), 374-77. As acknowledged by TBC’s expert, Professor Ernst, while the discussion in Walter Schwarz’s study omitted some information, Schwarz identified a case concerning a Pissarro (mentioning the artist by name) and included many details about the Picture: that it had

*Appendix I*

been sold in 1939 for RM 900 and then auctioned in Berlin for RM 95,000 (Schwarz, page 191). *See* DE 223-5 1/20/15 Ernst Decl., ¶ 22. There are a number of “clues” provided in this account. Most importantly, Schwarz provided a citation (footnote 3 on page 191) to the compendium of CORA decisions, as acknowledged by Ernst in his 9 March 2015 report. (DE 249-23) 3/9/15 Ernst Report, ¶ 35. And to repeat: Walter Schwarz’s citation offers the precise volume and page numbers to the CORA documents regarding the review of the early litigation associated with the Picture. Following Schwarz to the published CORA documents would have made it absolutely clear that this was the Cassirer’s Pissarro and was the subject of postwar restitution proceedings. Ernst’s contention that an inquiry in 1976, even if it had been called for, would not have led back to Nazi era events, simply belies the historical record. *See* (DE 249-23) 3/9/15 Ernst Report, ¶ 33. This formulation is preceded by what I regard as an erroneous premise from Professor Ernst; namely “that there have not been ‘red flags’ which should have urged the Baron to raise the issue of the Painting’s provenance.” The conclusion that one could not have connected the Picture back to the Nazi era is even more mystifying.

178. In short, the CORA decision publicly identified Lilly’s ownership of the Painting in 1954. Ex. 23 n. 1. The CORA decisions were published and available to the public. (DE 223-5) 1/20/15 Ernst Decl., ¶ 22. As discussed further below, the availability of the published CORA decisions and their bearing on restitution claims for Nazi-looted goods certainly would have been known to the institutions and individuals who specialized in provenance research

*Appendix I*

after World War II, and to major art collectors including the Baron and later, the Thyssen-Bornemisza Museum.

**N. TBC Also Knew the Painting was Stolen**

179. In December 1988, the Republic of Spain and its later formed TBC entered into a Loan Agreement for the Baron's collection, which included the Painting. The agreement called for a 9.5 year loan of 787 paintings. Ex. 83.

180. At the outset, it is important to note that the Baron and his wife were integral parts of TBC from its inception. Specifically, in accordance with the Loan Agreement, at the time TBC was formed, the Baron was given the right to name 50% of TBC's board, and the Baron himself was to be TBC's "Chairman for Life." Ex. 83 at 10014, 10021.

181. This meant that the Baron himself was on both sides of the transaction in the subsequent purchase and sale of the *Rue Saint-Honoré* to TBC. Accordingly, the knowledge he had that the Painting was stolen is also knowledge TBC had.

182. In connection with the sale, at the outset TBC decided to restrict its advisors and counsel from doing any research about the provenance of all artworks acquired by the Baron before 1980, which includes the Painting. *See* Ex. 98 at 13, 19; Ex. 212 at 1; Ex. 183 at 2–3; Ex. 94 at 1; Ex. 205 at 7.

*Appendix I*

183. From a provenance research perspective, this date cut off was not only arbitrary but in many ways illogical. TBC knew that the Baron had acquired much of his collection prior to 1980. Accordingly, the 1980 cut off resulted in almost no provenance research being done on much of the collection generally and on the Painting specifically. In other words, TBC was looking only whether the Baron possessed the Painting since 1980 and whether he had sold it since that time.

184. Given the age of many of the paintings in the collection, and the fact that many pieces in it were created in Europe before WWII, TBC had a heightened duty to ensure it was not buying Nazi looted art.

185. However, cutting off research at 1980 meant that very few, if any, pieces could be examined to see if they had been looted by the Nazis.

186. Perhaps more troubling is the fact that TBC's own documents demonstrate that the cut off was put in place because it believed that it had gone as far back as it needed to go to later argue that, even if the art was stolen, the Baron had acquired title pursuant to acquisitive prescription and had passed good title to TBC. *See* Ex. 98 at 13, 19 (“Paintings held bona fide within the [Thyssen-Bornemisza] family structure and in Switzerland since [January 1, 1980] would have been acquired by prescriptive rights by the time of the Loan Agreement,” and, “Where possible, it was intended that reliance should be placed on prescriptive rights where the Baron . . . had held a painting in good faith in Switzerland for the required period.”).

*Appendix I*

187. This kind of gamesmanship is not the purpose of provenance research and is contrary to the “best practices” I discussed above.

188. As did the Baron, TBC inspected the Painting at the time it was first delivered to them.

189. Undoubtedly, TBC saw the partial Cassirer Gallery label from Berlin, Germany on the back, along with evidence of many other torn labels.

190. TBC was well aware of the Cassirer Gallery at the time it purchased the Painting.

191. For example, and as discussed above, TBC’s website indicates that it has done complete provenance research for other works, including works that were sold by what TBC calls “Paul Cassirer’s prestigious Berlin Gallery.” Ex. 368. Moreover, provenance descriptions for at least 20 artworks that were either purchased by the Baron’s father directly from the Cassirer Gallery, or where catalogue descriptions respectfully acknowledge on the Paul Cassirer Gallery in Berlin for promoting or exhibiting the particular artist or work of art in the TBC collection, *See* ¶112, *supra*.

192. Yet, TBC accepted the provenance provided by the Baron, namely a sale in 1899 in France and then a later sale to the Baron in 1976 from the Galerie Joseph Hahn in Paris (which, of course, was incorrect). There was no mention of the Painting ever being in Germany or being taken from there, or it ever being at the Cassirer Gallery.

*Appendix I*

193. However, the records in the possession of TBC (obtained from the Baron) showed the Painting was actually purchased in the Stephen Hahn Gallery in New York.

194. Specifically, despite the fundamental differences in these two galleries, run by different people, in two different cities, in two different countries, on two different continents, the Baron and his foundation repeatedly stated that the Painting was purchased from the Joseph Hahn Galerie in Paris, even though the Baron's foundation had in its files the sales receipt from the Stephen Hahn Gallery in New York. Notwithstanding the fact that Joseph Hahn was the father of Stephen Hahn, they operated separate galleries, I agree with the characterization of Claire Durand-Ruel Snollaerts that this was "false information," Ex. 143 at 18, and I draw negative inferences from TBC's propagation of this information. *Id.*

195. By publishing this false provenance information, TBC perpetuated the impression that the Painting had never left Europe after the war, had never been in the possession of the Cassirer family in Germany for nearly 40 years, had never been smuggled out of Germany in violation of military law after the war, and that the Painting had never been to the United States. These publications of false information may have been an attempt at "scrubbing." The practice of "scrubbing" a painting's provenance was regularly used to conceal dubious provenance for Nazi-looted art works.

*Appendix I*

196. Nevertheless, TBC did nothing to resolve this and, as stated above, designed a provenance research protocol that would ensure that records documenting the inaccurate provenance would not be found.

197. There is no good faith reason to do that and supports my opinion that TBC knew the Painting was stolen.

198. Further, TBC acquired the Baron's collection in a transaction in which TBC paid \$350 million, far below fair market value at the time. According to the TBC's own website, the transaction as a whole was valued at between \$1 billion and \$1.5 billion. Ex. 132 at 6. According to independent sources, the transaction was worth as much as \$2 billion. *See* Ex. 53. In my opinion, the payment of below market rates in connection with a sale of fine art is consistent with a transaction in which title is in question.

**O. CONCLUSION**

The evidence of the Baron's and TBC's knowledge that the Impressionist masterpiece they were acquiring was looted by the Nazis can only be viewed in the context of the Holocaust, the Nazis' massive and unprecedented looting of Jewish families' assets including their art works, and the role of the Cassirer family in industry, culture, and art in Europe.

The Cassirer family was one of the most prominent Jewish families in Europe in the late 19th and early 20th centuries, and recognized as leaders in several

*Appendix I*

industries, as well as in arts and culture. As one of the most prominent Jewish family art collectors in Germany, it was understood that Cassirer family members had their art works looted by the Nazis. One of those works was the Pissarro masterpiece, the *Rue Saint-Honoré*.

The *Rue Saint-Honoré* purchased by the Baron had almost all of the labels stripped from the back except for partial labels from Paul Durand-Ruel's famous gallery in Paris, and the Cassirer family's gallery and publishing house (Kunst und Verlagsanstalt) in "Berlin." The Baron and later TBC would have recognized the Cassirer label as the Collection includes 20 discrete works of art whose TBC catalogue entries today tout the fact that they were either purchased directly from, or their provenance was significantly enhanced by association with, the Cassirer Gallery in Berlin,.

Neither the Baron nor TBC did any meaningful provenance research. To the contrary, the Baron took steps immediately to further obfuscate the inaccurate provenance he was sponsoring by claiming the piece he himself had purchased in New York was instead purchased at a Gallery with a similar name in Paris. When TBC acquired the Painting, it too knew the given provenance was inaccurate but designed a research protocol that ensured that the true provenance would not be identified and documented. It also repeated and sponsored the same false provenance the Baron did. Of course, since TBC itself was 50% controlled by the Baron, it had the same knowledge he did.



134a

*Appendix I*

This is a rare case where there is no dispute that the art work in question was, in fact, stolen from the family seeking its return. TBCs defense that it and the Baron were ignorant of this theft is simply not supported by the evidence I have reviewed.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 20<sup>th</sup> day of November, 2018, at Claremont, CA.

/s/

Jonathan Petropoulos

Dated November 20, 2018

Respectfully Submitted,

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135a

*Appendix I*

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