No. 25-

IN THE

Supreme Court of the United States

JULIUS H. SCHOEPS, BRITT MARIE ENHOERNING, AND FLORENCE VON KESSELSTATT,

Petitioners,

v.

SOMPO HOLDINGS, INC., SOMPO JAPAN INSURANCE INC., SOMPO INTERNATIONAL HOLDINGS LTD. AND SOMPO FINE ART FOUNDATION,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

JOHN J. BYRNE, JR.
Counsel of Record
THOMAS J. HAMILTON
BYRNE GOLDENBERG
& HAMILTON PLLC
1025 Connecticut Avenue, NW
Washington, DC 20036
(202) 857-9775
jjb@bghpllc.com
tjh@bghpllc.com

Counsel for Petitioners

121064

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTIONS PRESENTED

1. Whether the Holocaust Expropriated Art Recovery Act of 2016 (HEAR Act), Pub. L. No. 114-308, 130 Stat. 1524 (2016), as amended by S. 1884 (enacted Apr. 13, 2026) allows federal courts to exercise their inherent federal equitable and common law authorities to adjudicate claims for the restitution of Nazi-confiscated artworks, or instead limits claimants exclusively to remedies based upon inconsistent state laws of commercial duress and unpredictable state choice of law rules.

2. Whether by wrongfully denying specific jurisdiction to claimants seeking the restitution of a Nazi-confiscated artwork *Schoeps* improperly obstructs U.S. foreign policy to facilitate the restitution of these materials and – correspondingly – usurps *de facto* the exclusive foreign policy authority of Congress and the President.

3. Whether equitable estoppel precludes the federal judiciary from frustrating the reasonable detrimental reliance of both Holocaust victims and their heirs as well as fellow *Terezin Declaration* signatory nations that the HEAR Act would afford effective judicial remedies.

PARTIES TO THE PROCEEDINGS

Petitioners, all of whom were Plaintiffs in the District Court and Appellants in the Court of Appeals, are Julius H. Schoeps; Britt Marie Enhoerning; and Florence von Kesselstatt.

Respondents, all of whom were Defendants in the District Court and Appellees in the Court of Appeals, are Sompo Holdings, Inc., which is a Japanese corporation; Sompo Japan Insurance Inc., which is a Japanese corporation; Sompo International Holdings Ltd., which is a Bermuda corporation; and Sompo Fine Art Foundation, which is a Japanese foundation.

CORPORATE DISCLOSURE STATEMENT

All of the Petitioners are individuals, so no corporate disclosure statement is required. *See* Sup. Ct. R. 29.6.

RELATED PROCEEDINGS

United States Court of Appeals for the Seventh Circuit:

Julius H. Schoeps, et al. v. Sompo Holdings, Inc., et al., No. 25-1405 (Judgment entered November 21, 2025; Order Denying Petition for Rehearing or Rehearing En Banc entered January 22, 2026).

United States District Court for the Northern District of Illinois:

Julius H. Schoeps, et al. v. Sompo Holdings, Inc., et al., No. 22 CV 7013 (Amended Judgement entered June 11, 2024).

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OPINIONS BELOW

The opinion of the Seventh Circuit directly at issue in this appeal is published at 160 F.4th 815 (7th Cir. 2025) and a copy of the official opinion is reproduced at Appendix A.

The District Court decision from which the appeal was taken is published at 736 F.Supp.3d 582 (N.D. Ill. 2024) and a copy of the official opinion is reproduced at Appendix B.

JURISDICTION

The Seventh Circuit decision affirming the Final Judgment of the District Court dismissing this action was issued on November 21, 2025. The Petitioners' timely-filed Petition for Panel Rehearing or Rehearing En Banc was denied on January 22, 2026.

This Court has jurisdiction under 28 U.S.C. § 1254(1) and Supreme Court Rule 13.3.

RELEVANT STATUTORY PROVISIONS

The Holocaust Expropriated Art Recovery Act of 2016, Pub. L. No. 114-308, 130 Stat. 1524 (2016) is reproduced at App. G. The *Terezin Declaration* is reproduced at App. H.

STATEMENT OF THE CASE

In 1934, Nazi Coercion and Genocidal Policies in Violation of the International Law of Human Rights Compel Prominent Jewish Berlin Banker and Private Art Collector Paul von Mendelssohn-Bartholdy to Relinquish the Iconic Van Gogh Painting *Sunflowers* in a Paradigmatic "Forced Sale" or Sale under Duress

The Nazis seized control of Germany when Adolf Hitler was appointed Chancellor on January 30, 1933. Paul von Mendelssohn-Bartholdy (Mendelssohn-Bartholdy) then was a prominent Jewish Berlin banker and modern art collector. Nazi exclusionary policies and related duress and coercion calculated to eliminate Jews from the German economy and society and dispossess them of their property compelled him to begin liquidating his art collection including the Painting to arrest his increasingly negative periodic cashflow. The Nazi government, *inter alia*, organized boycotts of Mendelssohn-Bartholdy's Berlin bank, Mendelssohn & Co., and related businesses; pressured him to forfeit land; compelled him to flee his residence in downtown Berlin by threatening violence against him and his family; removed him from banking, professional and business positions essential to his banking success; and demonized him and his family in the press as Jewish enemies of the state. In 1934, when Mendelssohn-Bartholdy sold the Painting, his annual income was approximately 14% of what it had been in 1932.[1] Mendelssohn-Bartholdy died of a heart attack in May 1935.

In 1987 – and to Make Its Discrete Corporate Brand "Synonymous" with *Sunflowers* – Sompo's Corporate Predecessor Yasuda Acquires *Sunflowers* at Christie's in London in Reckless Disregard of Its Conspicuous Nazi Taint and Since Has Commercially Exploited in Illinois and Throughout the U.S. What It Long Has *Known* Is a Nazi-Tainted Painting

In 1987, Yasuda Fire & Marine Insurance Company (Yasuda) – a predecessor corporation of defendant

1. First Amended Complaint (F.A.C.) ¶ 173.

Sompo Japan Insurance, Inc. (Sompo Japan) – acquires *Sunflowers* at Christie's in London notwithstanding that the Christie's auction catalog identifies "Paul von Mendelssohn-Bartholdy, Berlin" as the owner in or around the Nazi period. Yasuda ignores the conspicuous Nazi-tainted provenance of the Painting because it is resolved to buy *Sunflowers* at any price to make the Painting synonymous with its discrete corporate brand.[2]

In 2001-2002, Yasuda – suspicious that *Sunflowers* bears a Nazi taint – displays the Painting for 3.5 months at a prestigious international exhibition titled *Van Gogh and Gauguin: Studio of the South Exhibition* (Exhibition), curated by the Art Institute of Chicago (AIC). Yasuda exhibits the work after the Art Institute of Chicago AIC defrauds the U.S. State Department into assuring that the Painting will not be seized as Nazi contraband. Moreover, the AIC conceals all references to Paul von Mendelssohn-Bartholdy owning the Painting in Nazi Germany. As a result, Yasuda sends the work to Chicago and reaps the copious branding and marketing benefits that accrue from the extensive Illinois, U.S., and international publicity that the Exhibition garnered enabling Yasuda to associate its corporate brand with *Sunflowers* maximally.[3]

Sompo Holdings long has employed an image of *Sunflowers* prominently on its website as emblematic of its discrete corporate brand to help sell insurance because the Painting exudes warmth and positive feelings, and invokes the creative and celebrated genius of the legendary Van Gogh. The message that Sompo Holdings attaches to the *Sunflowers* image reinforces these sentiments:

2. F.A.C. ¶ 239.

3. F.A.C. ¶ 6, 33.

"True Feelings and an Enriched Heart for People and Society through Arts and Culture." In this manner – and through a marketing scheme known as "archetypal branding" – Sompo Holdings solicits business in Illinois and throughout the U.S., and refers Illinois and other prospective U.S. insurance consumers to its wholly owned subsidiary, Sompo International, as the corporate vehicle by which Sompo Holdings conducts its insurance business outside of Japan. In fact, Sompo International states on its website that it has an office in Chicago, and that Chicago office indeed has "Sompo International" with the Sompo logo on its entrance. Notwithstanding the foregoing, Sompo International now maintains that its Chicago office is owned and operated by one of its subsidiaries in New York, Endurance Services Limited (Endurance). Endurance, however, has not registered with the Illinois Secretary of State or the Department of Insurance and its license to do business in Illinois was revoked in 2022.[4]

In 1998 Both Congress and the President - Through Multiple Federal Statutes as Well as an International Executive Agreement – Recommit the U.S. To the Seminal U.S. Post-World War II Foreign Policy to Restore to Rightful Owners Artworks Lost as a Consequence of Nazi Policies and Related Coercion

Beginning in 1998 the U.S. commences an international campaign to encourage Holocaust victims and their Petitioners to come forward to assert claims for the restitution of Nazi-confiscated artworks like *Sunflowers*. The international commitment of the U.S. in this regard includes a December 3, 1998 conference in Washington D.C. of some 44 governments affected by

4. F.A.C. ¶ 31, 83.

Nazi art looting entitled *The Washington Conference on Holocaust Era Assets* (*Washington Conference*). The *Washington Conference* concludes by promulgating the *Washington Conference Principles on Nazi-Confiscated Art* (the "*Washington Principles*") which sets forth ten prescriptions by which claims to recover Nazi-era artworks would be encouraged and resolved. While the *Washington Principles* were not judicially enforceable they expressly: (1) encourage Holocaust victims and their Petitioners to assert claims for the recovery of Nazi-confiscated artworks; (2) declare "that steps should be taken expeditiously to achieve a ***just and fair solution***" to such claims (emphasis and italics supplied); and (3) encourage the signatory nations to "develop national processes to implement these principles, particularly as they relate to alternative dispute resolution mechanisms for resolving ownership issues." The *Washington Principles* became the foundation for the renewed international initiative to return Nazi-confiscated artworks such as *Sunflowers* to rightful owners.

In 1998, Congress also enacts the *Holocaust Victims Redress Act*[5] (declaring U.S. policy favoring restitution of Nazi-confiscated art); *Nazi War Crimes Disclosure Act*[6] (mandating disclosure of records to facilitate claims and asset tracing); *U.S. Holocaust Assets Commission Act of 1998*[7] (creating a federal commission to identify Holocaust-era assets and restitution gaps).

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5. Pub. L. No. 105-158, 112 Stat. 15 (1998).

6. Pub. L. No. 105-246, 112 Stat. 1859 (1998).

7. Pub. L. No. 105-186, 112 Stat. 611 (1998).

In 2000 the U.S. participates in the Vilnius Forum which reaffirms and seeks to advance the Washington Conference Principles, emphasizing the need to achieve "just and fair solutions" for Holocaust-era looted art.[8]

In 2009 – and at the Behest of the U.S. Department of State – Some 47 Countries Sign the 2009 Terezin Declaration on Holocaust Era Assets and Related Issues (*Terezin Declaration* or *Declaration*) Urging all Stakeholders to Ensure that Their Discrete Legal Systems Resolve Claims for the Restitution of Nazi-Confiscated Artworks Expeditiously, in a "Just and Fair" Manner and Based on "the Facts and Merits" of the Discrete Claim

The *Terezin Declaration* urges all of its 47 stakeholders to *ensure* that their discrete legal systems facilitate the restitution of Nazi-era artworks, and apply all relevant laws in a manner that accomplishes this objective:

> Keeping in mind the Washington Conference Principles on Nazi-Confiscated Art, and considering the experience acquired since the Washington Conference, we urge all stakeholders to *ensure* that their legal systems or alternative processes, while taking into account the different legal traditions, facilitate just and fair solutions with regard to Nazi-confiscated and looted art, and to make certain that claims to recover such art are resolved expeditiously and based on the facts and merits of the claims and all the relevant documents

8. *See Vilnius International Forum on Holocaust-Era Looted Cultural Assets, Vilnius Forum Declaration* (October 5, 2000).

> submitted by the parties. Governments should consider all relevant issues when applying various legal provisions that may impede the restitution of art and cultural property, in order to achieve just and fair solutions, as well as alternative dispute resolution, where appropriate under law.[9] (Italics supplied.)

In 2016 Congress Expressly Invokes its Foreign Policy and Related War Powers Authority under the U.S. Constitution to Enact the Landmark Holocaust Expropriated Art Recovery Act of 2016 (HEAR Act) to "Ensure" that U.S. Courts Decide Judicial Claims Seeking the Restitution of Nazi-Confiscated Artworks According to Prescribed U.S. Foreign Policy - Equitably, Expeditiously, and on Their Substantive Merits

In 2016, the U.S. enacts the HEAR Act (Act) for the *primary* declared purpose of *ensuring* that judicial claims for the restitution of Nazi-confiscated artworks are resolved expeditiously, in a "just and fair manner," and on their substantive merits in accordance with established, bedrock U.S. foreign policy. A secondary – and subordinate but essential purpose of the Act – is to remove as an obstacle to prosecuting such claims otherwise applicable federal and state statutes of limitation. Section 3 of the Act prescribes as follows:

> **SEC. 3. Purposes.**
>
> The purposes of this Act are the following:

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9. Terezin Declaration on Holocaust Era Assets and Related Issues, June 30, 2009, reprinted in App. 89a.

> (1) To ***ensure*** that laws governing claims to Nazi-confiscated art and other property further United States policy as set forth in the Washington Conference Principles on Nazi-Confiscated Art, the Holocaust Victims Redress Act, and the Terezin Declaration. (Emphasis and italics added).
>
> (2) To ensure that claims to artwork and other property stolen or misappropriated by the Nazis are not unfairly barred by statutes of limitation but are resolved in a just and fair manner.[10]

The Act's legislative history reinforces that its primary purpose is to ensure that laws that apply to art restitution claims support prescribed U.S. foreign policy, and thereby "to ***guarantee*** that the United States fulfills the promises it has made to the world to 'facilitate just and fair solutions with regard to Nazi-confiscated and looted art.'"[11] (Emphasis and italics added).

In 2017, Congress passes the Justice for Uncompensated Survivors Today (JUST) Act of 2017,[12] reinforcing the U.S. commitment to Holocaust art restitution. The JUST Act requires the U.S. Department of State to submit a report to Congress on the extent to which endorsing countries are complying with the *Washington Principles* and *Terezin Declaration*.

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10. App. 84a.

11. S. Rept. 114-394 at 5-6 (2016).

12. Pub. L. No. 115-171, 132 Stat. 1288 (2018).

In 2020, the State Department publishes the JUST Act Report (2020) evaluating the progress of each endorsing country in fulfilling its commitments to the Declaration.[13] The report recommits the U.S. as leading the effort to seek "just and fair" solutions for property lost in the Holocaust, and rebukes several countries – most notably Poland – for failing to fully implement the *Washington Principles* and *Terezin Declaration*.

In 2024, the U.S. again assumes the initiative in promulgating the *Best Practices for the Washington Conference Principles on Nazi-Confiscated Art* (*Best Practices*) which reflects an international consensus on how the *Washington Principles* should be implemented.[14] The *Best Practices* establish the continued vitality of U.S. policy favoring Holocaust art restitution, and clarify that Holocaust-era "confiscation" includes duress sales made under Nazi persecution such as how Mendelssohn-Bartholdy surrendered *Sunflowers*.

On April 13, 2026, President Trump signs into law amendments to the HEAR Act of 2016 (Amendments).[15] The Amendments make the HEAR Act permanent and seek to ensure that claims for artworks lost as a result of Nazi persecution are resolved on their substantive merits by denying defendants all affirmative defenses to judicial claims seeking the restitution of these materials.

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13. *See* U.S. Dep't of State, Report to Congress on the Justice for Uncompensated Survivors Today (JUST) Act of 2017 (2020).

14. *See* U.S. Dep't of State, Best Practices for the Washington Conference Principles on Nazi-Confiscated Art (Mar. 5, 2024).

15. *See* Holocaust Expropriated Art Recovery Act of 2016 (HEAR Act), Pub. L. No. 114-308, 130 Stat. 1524 (2016), as amended by S. 1884 (enacted Apr. 13, 2026) (HEAR Act Amendment).

The F.A.C. Properly Pleads Multiple Discrete Bases for Asserting Specific Jurisdiction Over Sompo and its Constituent Corporate Entities for Commercially Exploiting *Sunflowers* in the U.S. Extensively While Fraudulently Concealing its Nazi Taint Both at the 2001-2002 Van Gogh Exhibition in Chicago and Continually Since on its Corporate Website to Drive Business to its Brick-and-Mortar Offices in Chicago and Throughout the U.S.

The F.A.C. alleges concerted fraudulent misconduct of the several Sompo predecessor corporate entities in commercially exploiting *Sunflowers* at the Chicago Exhibition in 2001-2002 by arrogating extensive branding and marketing benefits associating their collective corporate identity with what they then *knew* to be a Nazi-tainted painting throughout the U.S. and internationally.[16] The F.A.C. also asserts Sompo's ongoing use of the Painting on its corporate website to drive business to its brick-and-mortar offices in Chicago and throughout the U.S.[17] The F.A.C properly pleads jurisdiction under several sections of the pertinent Illinois long arm statute (735 Ill. Comp. Stat. 5/2-209 (2016)). These include: jurisdiction under Section 2-209(c) (jurisdiction to the maximum extent of the U.S. and Illinois Constitutions); Section 2-209(a)(2) (jurisdiction arising from or relating to the commission of a tortious act within Illinois); Section 2-209(a)(1) (jurisdiction arising from transacting any business in Illinois); and section 2-209(a)(4) (jurisdiction for contracting to insure personal or business risks.)[18]

16. *See, e.g.*, F.A.C. ¶ 106.

17. F.A.C. ¶ 39.

18. F.A.C. ¶ 63-111.

Moreover – and as paragraphs 57-60 of the F.A.C. relate in detail – the F.A.C. pleads facts sufficient to negate the discrete corporate identities of the several Sompo defendants based upon every legal theory known both to U.S. and Illinois law. These include using the corporate form to perpetrate fraud or injustice or to defeat legislative policies.[19]

In addition, the Petitioners invoked specific jurisdiction of the Sompo entities based upon *IDS Life Insurance Company v. SunAmerica Life Insurance Company*[20] and a plethora of other Illinois judicial decisions asserting "jurisdiction over a parent company whenever its subsidiaries conduct the business of the parent rather than their own business."

The First Amended Complaint (F.A.C.) invokes the HEAR Act to assert both inherent – as well as textually conferred – federal equitable and common law authority to restitute Nazi-confiscated artworks like *Sunflowers* as necessary to accomplish the express purpose of the Act to "e*nsure*" that claims for the return of Nazi-era artworks are resolved in an "expeditious" and "just and fair" manner.[21]

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19. *See* F.A.C. ¶¶ 57-60 and citing *First City Bank v. Banco Para Comercio Exterior de Cuba*, 462 U.S. 611, 628 (1983); *Anderson v. Abbott,* 321 U.S. 348, 362-363 (1944); and *Bangor Punta Operations v. Bangor Aroosotok Railroad Company, et al*., 417 U.S. 703, 713 (1974).

20. 136 F.3d 537, 531 (7th Cir. 1998).

21. F.A.C. Counts 9-12; ¶¶ 315-329.

Finding that the HEAR Act – and the Predicate Federal Statutes and Executive Agreements Upon Which it is Based – Represent Merely "Desirable Social Policy" Which the Court Lacks Judicial Authority to Enforce Rather than the Obligatory U.S. Foreign Policy of Both Congress and the President, the District Court Dismisses the F.A.C. with Prejudice and for Lack of Specific Jurisdiction

On June 3, 2024, the District Court dismisses the F.A.C. with prejudice ruling – *inter alia* – that it lacks specific jurisdiction over the Petitioners' claims because their claims lacked putative "suit related contacts" with Illinois.[22] The Court concluded that the Petitioners' claims – including presumably to recover the unjust enrichment that Sompo has garnered from wrongfully commercially exploiting *Sunflowers* in Illinois – "are unrelated to the sale of insurance."[23]

The Court rules further that "[w]hether the Court can hear the plaintiffs' equitable causes of action depends on whether such claims exist under federal common law."[24] The Court concludes, moreover, that because a foreign nation was not a party to the Petitioners' lawsuit against Sompo – and the *Terezin Declaration* was legally non-binding among is signatories – the Petitioners' claims did not raise foreign policy concerns.[25] Accordingly – the Court concludes – the Petitioners' claims are premised upon merely "desirable social policy," and eschews judicial

22. App. 57a.

23. App. 58a.

24. App. 44a.

25. Id. at 45a.

authority to enforce such mere "matters of conscience."[26] Finally, the Court enters Judgment – though defective – at the same time it files the Memorandum Opinion and Order dismissing the case.[27]

The Seventh Circuit Affirms the District Court Decision by Ruling that the Expressly Foreign Policy-Based HEAR Act Deprives Courts of Their Inherent Federal Equitable and Common Law Authorities to Restitute Nazi-Confiscated Artworks While Disregarding the Allegations of the F.A.C. Establishing Specific Jurisdiction Based Upon the Extensive Marketing and Branding Benefits that the Painting Long Has Conferred Upon Sompo in Multiple Ways to Help it Sell Insurance in Illinois

The appellate court reasoned that HEAR Act § 5(f) prescribing that "[n]othing in this Act shall be construed to create a civil claim or cause of action under Federal or State law" deprives the court of its inherent equitable authority to "issue unjust enrichment and restitution remedies" as this provision cannot be read as creating an implied federal cause of action.[28]

The Opinion also rules that the Petitioners had failed to sustain their federal common law claims under the HEAR Act because they had not demonstrated that the state law of Illinois conflicted with the U.S. policy concerning the restitution of Nazi-confiscated artworks.[29]

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26. App. 68a.

27. *See* Amended Judgment, App. 70a.

28. App. 10a.

29. App. 13a.

Moreover, the court concludes that "Congress enacted the Hear Act to ensure availability of state law claims" that otherwise applicable state statutes of limitation would time-bar,[30] and rules that the expressly declared primary purpose of the act to "ensure" that laws governing claims to Nazi-confiscated artworks further U.S. foreign policy to restitute Nazi-confiscated artworks subserves the stated second purpose of the Act to suspend otherwise applicable state statutes of limitation. The court concluded that "[t]here can be no serious doubt that Congress has made the judgment that reliance on claims based on state law was consistent with these United States foreign policy objectives."[31]

The Opinion also affirms the District Court ruling denying specific jurisdiction because – the court concludes – Sompo's sale of insurance in Illinois does not relate to the Petitioners' claims that Sompo wrongfully employs *Sunflowers* in Illinois to help it sell insurance and to reap unjust enrichment, as the "sale of insurance does not relate to the plaintiffs' claims."[32] The court determined implicitly that in displaying *Sunflowers* at the Chicago Exhibition for 3.5 months in 2001-2002 Sompo did not receive "fair warning – knowledge that a particular activity may subject [the defendant] to the jurisdiction of a foreign sovereign,"[33] even though Sompo officials fretted that

30. App. 14.

31. App. 14a.

32. App. 6a, n. 7.

33. App. 21a-22a; citing *B.D. ex rel. Myers v. Samsung SDI Co., Ltd.,* 143 F.4th 757, 771 (7th Cir. 2025) (quoting *Ford,* 592 U.S. at 360).

displaying *Sunflowers* at the Exhibition in Chicago might result in the Painting being seized as Nazi contraband.[34]

The Opinion also ignores the many conspicuous branding and marketing benefits that Sompo reaped for 3.5 months from displaying the Painting at the AIC Exhibition in 2001-2002, as well as the branding and marketing advantages that Sompo continues to accrue from displaying *Sunflowers* prominently on its corporate website to drive business to its brick-and-mortar office in Chicago.

The Seventh Circuit Rejects a Petition for a Panel Rehearing and Rehearing En Banc

On January 22, 2026 the Seventh Circuit rejects a petition for a panel rehearing and rehearing en banc (Petition). The Petition relates that the state law of commercial duress upon which the Opinion relied as fulfilling the prescribed goal of the HEAR Act to facilitate the restitution of Nazi-confiscated artworks is – and on an omnibus scale – notoriously incoherent, inconsistent, and judicially unmanageable,[35] and so entirely unsuited for this

34. F.A.C. ¶ 246-255.

35. *See e, g.,* Grace M. Giesel, *A Realistic Proposal for the Contract Duress Doctrine,* 107 W.Va. L. Rev. 442, 446 (2005) (observing that "courts state illogical or nonsensical tests for application of the doctrine and then apply the test conclusory or with an implausible or impossible explanation or rationale"); Sian E. Provost, *A Defense of Rights-Based Approach to Identifying Coercion in Contract Law*, 73 Tex. L. Rev. 629, 633 (1995) ("[t]he terminology that courts use to invalidate or alter contracts on grounds of coercion differs from jurisdiction to jurisdiction and even from case to case. Moreover, the law makes little attempt to define

objective. The Petition relates further that "Congress is presumed to legislate against the backdrop of existing law, with knowledge of its substantive content,"[36] and so to be aware of the inability of this body of law to accomplish the primary purpose of the HEAR Act to "ensure" that the laws that apply in judicial claims seeking the restitution of Nazi-era artworks further the U.S. foreign policy goal of facilitating the return of these materials.

Notwithstanding the textual and foreign policy-based directive of Congress to the Federal Judiciary in the HEAR Act to exercise its judicial discretion to facilitate the prescribed objectives of the Act,[37] the Seventh Circuit refuses to correct what was a colossal error in misconstruing the HEAR Act.

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the terms precisely); Julie Kostritsky, *Stepping Out of the Morass of Duress Cases: A Suggested Policy Guide*, 53 Alb. L. Rev. 581, 592 (1989)(observing that "[c]onfusion prevails in duress law"); Otit Gan, *Contractual Duress and Relations of Power*, 83 Harv. J.L. & Gender 171, 176 (2013) (commenting that "duress doctrine has been criticized for its confusing nature").

36. Citing *Parker Drilling Mgmt. Servs. Ltd. v. Newton*, 587 U.S. 601, 611 (2019) and *Miles v. Apex Marine Corp*, 498 U.S. 19, 32 (1990) at page 10 of the Petition.

37. HEAR Act § 3, App. 84a.

REASONS FOR GRANTING THE PETITION

A. The Court Should Decide Whether the HEAR Act Deprives Courts of Both Their Inherent Federal Equitable as Well as Federal Common Law Authority to Restitute Nazi-Era Artworks, as *Schoeps* Conflicts with the Court's Established Precedents and Portends Disastrous Foreign Policy and Diplomatic Consequences, and the Several Circuit Courts Are Split Concerning When a Federal Statute Restricts the Equitable Authority of Federal Courts

1. *Schoeps* Misconstrues the HEAR Act as Wrongfully Depriving Federal Courts of Their Inherent Equitable Authority to Prescribe Appropriate Equitable Remedies to Protect Statutory Policies and the Circuit Courts Are Split Concerning When the Equitable Authority of Courts is So Limited

a. *Meghrig v. KFC Western*, 516 U.S. 479 (1996) Makes Clear that Federal Courts Retain Inherent Federal Equitable Authority to Prescribe Equitable Remedies to Safeguard Statutory Policies Unless a Statute Already Does So

In *Meghrig v. KFC Western, Inc.*,[38] the Court instructed that unless a comprehensive federal statutory scheme prescribes a discrete equitable remedy or remedies, federal courts retain their full equitable

38. 516 U.S. 479, 487-88 (1996).

authority to protect the policies and interests that the statute promotes. *Meghrig* signifies that a statute presumptively limits the equitable relief that federal courts otherwise might accord when it prescribes specific equitable remedies.

b. *Schoeps* Conflicts Not Only with *Meghrig* but Also with Many Court Precedents Reaffirming the Necessarily Broad Equitable Authority of Federal Courts to Protect Federal Policies and Promote Statutory Goals

As the Court reiterated in *Kansas v. Nebraska,*[39] the scope of a federal court's equitable authority and power is especially broad when protecting federal interests and giving "complete effect to public law." The Court long has recognized that federal courts enjoy maximal equitable authority to protect and promote statutory objectives.[40]

39. *Kansas v. Nebraska,* 574 U.S. 445, 456 (2015).

40. *See, e.g., Virginia Ry Co. v. System Federation No. 40, et al.*, 300 U.S. 515, 552 (1937); *United States v. Morgan*, 307 U.S 183, 194 (1939); *Porter v. Warner Holding Co.,* 328 U.S. 395, 398 (1946); *See also Mitchell v. Robert De Mario Jewelry, Inc.*, 361 U.S. 288, 291 (1960); *United States v. First National Bank*, 379 U.S. 378, 382 (1965); *Liu v. Securities and Exchange Commission*, 591 U.S. 71, 86 (2020), reaffirming these principles.

c. As *Federal Trade Commission v. Credit Bureau Center, LLC,* 937 F.3d 764, 782-83 (7th Cir. 2019) Relates, Federal Circuit Courts are Conflicted Concerning When Federal Statutes Preclude Implying Equitable Remedies to Further Prescribed Objectives

As *Credit Bureau Center, LLC* observes, the Courts of Appeals conflict concerning when federal statutes preclude implying equitable remedies to further prescribed objectives. Some circuits conclude that a statute displaces equitable authority when it specifies a particular remedy, while others construe *Meghrig* more narrowly as requiring that "courts must consider a statute's remedial scheme" when determining whether a statute displaces equitable authority.[41]

Schoeps spawns more conflict still by ruling that a federal court can be divested of its inherent equitable authority to protect federal statutory policies when the relevant statute prescribes no equitable remedy and even when it affirmatively instructs – as its primary declared purpose – that courts "ensure" that the laws that apply in judicial claims brought under the statute promote the declared goals of the statute.

The conspicuous conflict – and palpable confusion – among the several circuit courts on this important question alone recommends it for the Court's review. But that the skewed *Schoeps* decision in addition portends disastrous diplomatic and foreign policy consequences

41. 937 F.3d at 782-83.

for the U.S. government by depriving courts of their inherent equitable authority to accomplish the expressly equitable objective of the HEAR Act to restitute Nazi-confiscated artworks in a "just and fair" manner – and thereby subverts the U.S. diplomatic and foreign policy commitment to the *Terezin Declaration* – makes the Court's review all the more imperative.

d. Hear Act § 5(f) Stating that the Act Shall Not be Construed as *Creating* a Civil Claim under Federal or State Law Does Not – and Indeed Cannot - *Deprive* Federal Courts of the Unrestricted Equitable Authority that They Enjoy Inherently to Protect Important Federal Statutory Objectives

That the HEAR Act § 5(f) Rule of Construction prescribing that "[n]othing in this Act shall be construed to create a civil claim or cause of action under Federal or State Law" does not – and cannot – alter this conclusion. Merely that the HEAR Act does not confer an implied – and necessarily *subjectively judicially created* – private right of action upon individual claimants cannot be understood as revoking the Act's express directive to courts to "ensure that laws governing claims to Nazi-confiscated artworks" further prescribed U.S. foreign policy as HEAR Act § 3(1) directs. For interpreting the HEAR Act in such manner would negate its primary declared purpose – and thereby violate an elemental principle of statutory construction that precludes courts from construing a provision of a statute to defeat its declared purpose, or to achieve an absurd result. As the Court counsels in *Griffin v. Oceanic*

Contractors,[42] "interpretations of a statute which would produce absurd results are to be avoided if the alternative interpretations consistent with the legislative purpose are available." Moreover, the proscription against "*creating*" a new cause of action cannot reasonably be understood as *depriving* courts of authority with which they inherently are vested.

2. *Schoeps* Also Wrongfully Repudiates the Inherent Federal Common Law Authority that Courts Wield in Foreign Affairs to Prevent State Law from Frustrating Foreign Policy Objectives as Well as the Hear Act's Express Textual Grant of Such Authority in Section 3

a. Residual Federal Common Law Authority Persists Post-*Erie* Whenever the Federal Government Exercises an Exclusively Sovereign Function Such as Conducting Foreign Affairs Upon Which the HEAR Act Expressly Is Premised

The HEAR Act requires the Court to fashion appropriate federal common law to achieve the expressly stated foreign policy objectives of returning Nazi-confiscated artworks to rightful owners expeditiously and in a just and fair manner based upon all relevant facts and circumstances. And the failure of the Court to do so would – and in violation of elemental principles of statutory construction – negate the expressly stated goals of the Act

42. 458 U.S. 564, 575 (1982).

and give it a preposterous and absurd construction.[43] As *Texas Industries v. Radcliff Materials, Inc.*[44] instructs, judicial authority to formulate federal common law post *Erie R. Co. v. Tomkins*[45] exists when – as in the HEAR Act – Congress expressly authorizes or directs it, and in such "narrow areas as those concerned with exclusively with the rights and obligations of the United States…or our relations with foreign nations."

The HEAR Act satisfies both conditions. As *Texas Industries* makes clear, federal courts enjoy federal common law authority to protect exclusively federal interests such as foreign policy. And in *Clearfield Trust Co. v. United States*, the Court instructed that when the federal government is performing an exclusively federal function grounded in the U.S Constitution – as is foreign policy – applying state law may subject the obligations of the U.S. to impermissible doubt requiring a *uniform* rule of decision.[46]

Accordingly – and as the Court explained in *Boyle v. United Technologies Corporation*[47] – "where the federal interest requires a uniform rule, the *entire* body of state law applicable to the area conflicts and is replaced by federal rules." (Italics added). Courts consistently have recognized that foreign policy requires uniform rules. *See,*

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43. *Griffin v. Oceanic Contractors*, 458 U.S. 564, 575 (1982).

44. 451 U.S. 630, 641 (1981).

45. 304 U.S. 64, 78 (1938), signaling the end of "federal general common law."

46. *Clearfield Trust Co. v. United States*, 318 U.S. 363, 367 (1943).

47. 487 U.S. 500, 508 (1988).

e.g., *American Insurance Association v. Garamendi*,[48] noting the 'concern for uniformity in this country's dealings with foreign nations'; *United States v. Bozarov*,[49] relating that "the need for uniformity in the realm of foreign policy is particularly acute," and the "compelling need for uniformity" in this arena.

As related, *supra* at n. 35, the state law of commercial duress that otherwise would apply in judicial claims brought to recover Nazi-confiscated artworks is notoriously inconsistent, incoherent, and judicially unmanageable and therefore unsuited for achieving the declared objectives of the HEAR Act. Accordingly, the state law of commercial duress evokes the precise concerns of *Clearfield Trust* regarding the discrepant state law of commercial instruments, signaling a similar and compelling need for a *uniform federal rule*. Moreover, because Congress legislates against a backdrop that presumes that it *knows* existing law in the areas in which it legislates,[50] it can be presumed that Congress understood the deficiencies of state law alone to achieve its foreign policy directives and so expressly directed courts to "ensure" that otherwise applicable state commercial law not frustrate the Act's primary declared purpose.[51]

Moreover, the "chaotic" state choice of law rules that govern how the state law of commercial duress applies in a discrete instance – and that further undermine the

48. 539 U.S. 396 (2003).

49. 974 F.2d 1037, 1044 (9th Cir. 1992).

50. *Parker Drilling Mgmt. Services Ltd. v. Newton*, 587 U.S. 601, 611 (2019).

51. HEAR Act § 3 (1).

prescribed goals of "ensuring" that the U.S. foreign policy to decide judicial claims for restitution in a "just and fair" manner – also impair this objective. As a prominent commentator instructed, the result of applying these variable and amorphous choice of law rules "on a macro level is virtually certain to undermine all relevant policy aspirations."[52]

b. The Express HEAR Act Directive in Section 3(1) (Purposes) to *Ensure* that the Laws that Apply in Judicial Claims Seeking to Recover Nazi-Era Artworks Support U.S. Foreign Policy Represents an *Express* Statutory Grant of Federal Common Law Authority to Accomplish this Purpose

As the authors of 19 Charles Alan Wright & Arthur R. Miller, *Fed. Prac. & Proc.* § 4516 (3d. ed. 2026) instruct, "the need for interstitial lawmaking arises as a consequence of the practical reality that it is impossible for Congress to draft any statute in sufficient detail so that it is completely comprehensive and comprehensible." As the authors point out, courts often view federal statutes as implicitly authorizing the creation of federal common law and only on "rare occasions" – such as the HEAR Act – is the "grant of authority to create federal common law actually…explicit."[53]

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52. Patricia Y. Reyhan, *A Chaotic Palette: Conflict of Laws Litigation Between Original Owners and Good Faith Purchasers of Stolen Art*, 50 Duke L. J. 955, 955 (2001).

53. 19 Charles Alan Wright & Arthur R. Miller, 19 *Fed. Prac. & Proc.* § 4516 (3d ed. 2026).

Accordingly, that courts habitually invoke federal common law liberally to promote statutory objectives makes the *explicit* directive of the HEAR Act that courts "ensure" that the laws that apply in judicial actions seeking to return Nazi-confiscated artworks an unambiguous and express delegation of both federal common law and equitable authority to achieve this objective. Indeed, the disastrous foreign policy consequences of relegating HEAR Act claimants to inadequate judicial remedies based upon the confused, inept, and variable state law of commercial duress and concomitantly flawed state conflicts of law principles *confirm* that federal common law is paradigmatically *necessary* in this context.

c. An Equitable Remedy Based Upon § 14 of the Restatement (Third) of Restitution Fulfills the Purpose of the HEAR Act to Assure that the U.S. Government Honors its Foreign Policy Commitment in the *Terezin Declaration* to *Ensure* that the Law that Applies in Judicial Claims Seeking to Recover Nazi-Confiscated Artworks Supports the *Declaration's* Objectives

Courts applying federal common law enjoy broad discretion in selecting the appropriate rule to achieve the prescribed federal objective and to give "complete effect to public law."[54]

Section 14 of the *Restatement (Third) of Restitution* (*Duress*) (2011) prescribes an optimal equitable principle

54. *Kansas v. Nebraska*, 574 U.S. 445, 456 (2015).

for effectuating the primary stated purpose of the HEAR Act to ensure that the laws that apply in judicial claims seeking the return of Nazi-era artworks resolve these claims expeditiously, in a "just and fair" manner, and on their substantive merits.[55] Section 14 provides that if *wrongful* duress induces the transfer of property, the current possessor must return it to the dispossessed former owner unless he or she is a "*bona fide* purchaser for value." Restituting Nazi-confiscated artworks based upon proof that "wrongful" duress induced the transfer coheres precisely with the prescribed goal of the HEAR Act to return artworks lost "because of" Nazi persecution,[56] as Nazi persecution violated the international law of human rights paradigmatically, and was, of course, inherently "wrongful" within the meaning of this section.

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55. Section 14 of the *Restatement of Restitution* provides as follows:

> **§ 14 Duress**
>
> (1) Duress is coercion that is wrongful as a matter of law.
>
> (2) A transfer induced by duress is subject to rescission as necessary to avoid unjust enrichment.
>
> (3) If the effect of duress is tantamount to physical compulsion, a transfer induced by duress is void. If not, a transfer induced by duress conveys voidable title.

56. HEAR ACT § 5(a), prescribing that the Act applies to "any artwork or other property that was lost during the covered period *because of* Nazi persecution." (Emphasis and italics added).

B. The Court Should Exercise its Supervisory Power to Correct a Decision that Wrongfully Dismisses a Meritorious Judicial Claim to Recover a Nazi-Confiscated Artwork at the Threshold Stages of Litigation and Thereby Sabotages U.S. Foreign Policy to Facilitate the Restitution of Nazi-Confiscated Artworks as the U.S. Promised its Diplomatic Partners in the *Terezin Declaration* with Concomitant Adverse Foreign Relations Consequences

1. *Schoeps* Wrongfully Ignores the Liberal Pleading Strictures for Adjudicating Motions Under Rule 12(b) and Improperly Affirms Putative Factual Findings of the District Court in this Context

By affirming a conspicuously improper finding of fact on a Fed. R. Civ. P. Rule 12(b) motion that ignores well-pleaded facts as well as an expert affidavit, the court not only undermines the U.S. foreign policy of both Congress and the President to *ensure* that judicial claims for the restitution of Nazi-confiscated artworks are resolved equitably and based upon their substantive merits, but makes a mockery of this prescription.

In evaluating motions to dismiss under to Fed. R. Civ. P. 12(b)(1) and 12(b)(2), the Court will accept as true all well-pleaded facts and draw all reasonable inferences in favor of the plaintiffs, and reads the complaint liberally with every inference favoring the plaintiff.[57] In addition,

57. *Ptasinska v. U.S. Department of State,* No. 07 C 3795, 2007 WL 3241560, at *2 (N.D. Ill. Nov. 1, 2007); *Expeditee LLC*

courts also must resolve factual disputes in affidavits in favor of the plaintiff.[58]

Schoeps calls for an exercise by the Supreme Court of its power under Rule 10(a) to supervise the federal judiciary based upon a ruling that has "far departed from the accepted and usual course of judicial proceedings." *Schoeps* wrongfully affirms a district court decision that violates Fed. R. Civ. P. 12(b) by improperly ***repudiating*** well-pleaded facts that establish specific jurisdiction, as well as foundational principles of specific jurisdiction grounded in the landmark *International Shoe v. Washington*[59] and reaffirmed recently in *Ford Motor Company*.[60] These principles assert personal jurisdiction over defendants for judicial claims that arise from or relate to the reciprocal benefits that they derive from purposeful forum contacts.

Notwithstanding these well-pleaded facts and an accompanying expert affidavit explicating and elaborating these points – and Sompo's admission at oral argument that the Exhibition garnered extensive international publicity[61] – the appellate court concluded that the district court properly had "found" that Sompo realized ***no benefit***

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v. Entities Listed on Exhibit 1, No. 21 C 6440, 2022 WL 1556381, at *2 (N.D. Ill. May 17, 2022).

58. *Expeditee LLC,* 2022 WL 1556381, at *2.

59. *International Shoe v. Washington*, 326 U.S. 310 (1945).

60. *Ford Motor Co. v. Montana Eighth Judicial Dist. Court*, 592 U.S. 351 (2021).

61. En Banc Petition at 8-9.

from the Exhibition that would justify asserting specific jurisdiction.[62]

The Petitioners also properly predicate specific jurisdiction upon Sompo's perpetual and continuing commercial exploitation of *Sunflowers* as its discrete corporate brand on its website by which it generates extensive revenue in Illinois and throughout the U.S.[63]

2. *Schoeps* Repudiates Bedrock Principles of Personal Jurisdiction Grounded in *International Shoe v. Washington*, 326 U.S. 310 (1945) that Assert Specific Jurisdiction Whenever a Defendant Realizes Tangible Benefits from Discrete Forum Contacts and the Controversy Arises from or Relates to Those Contacts

a. Constitutional Due Process for Specific Jurisdiction Is Satisfied When Defendants Realize Tangible Advantages or Benefits from Discrete Forum Contacts and the Exercise of Jurisdiction Otherwise Is Reasonable

Beginning with the seminal *International Shoe Co. v. Washington*[64] – and continuing through its latest guidance

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62. *Schoeps*, *supra,* note 7 at 830. It is axiomatic, of course, that on motions to dismiss under Rule 12(b) courts must accept as true all well pleaded allegations, as well as unrefuted evidence and party admissions.

63. 736 F. Supp. 3rd at 601-02.

64. *International Shoe Co. v. Washington*, 326 U.S. 310, 326 (1945).

in *Ford Motor Company v. Montana Eighth Judicial District Court*[65] – the Court consistently has reaffirmed that specific jurisdiction is premised upon a tacit bargain or *quid pro quo* giving rise to reciprocal reciprocity: in exchange for enjoying the privileges, benefits, and advantages of a forum state a defendant submits to the jurisdiction of that state regarding claims that arise from or relate to those discrete contacts.[66]

Ford observed that "[o]ur decision in *International Shoe* founded specific jurisdiction on an idea of reciprocity between a defendant and a State: When (but only when) a company 'exercises the privilege of conducting activities within a state' – thus 'enjoy[ing] the benefits and protections of [its] laws – the State may hold the company to account for related misconduct.'"[67] The Court consistently has equated due process in this context with *reasonable foreseeability*: if the defendant availing itself of the advantages, benefits and privileges of a forum state reasonably should *foresee* that its conduct in the state might occasion liability for a claim arising from or connected to those activities, due process is satisfied.[68]

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65. *Ford Motor Company v. Montana Eighth Judicial District Court*, 592 U.S. 351 (2021).

66. *See, e.g., J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873, 880 (2011) (Citation omitted); *Burger King v. Rudzewicz*, 471 U.S. 462, 474 (1985); *World Wide Volkswagen Corporation v. Woodson*, 444 U.S. 286, 297 (1980).

67. *Ford,* 592 U.S. at 360.

68. *Burger King Corp. v. Rudzewicz*, 412 U.S. 462, 474 (1985).

To avail a forum state does *not* require that the defendant be physically present within the state.[69] Nor does specific jurisdiction depend upon whether the *plaintiff* has cultivated minimum contacts with the forum.[70]

Once a defendant has "purposefully availed" the forum state in a manner sufficient to create "minimum contacts," the claim(s) of the plaintiff must "arise from or relate to" to these contacts in an integral manner. The conduct of the defendant *need not cause* the plaintiff's injury, and specific jurisdiction attaches when the claims of the plaintiff merely "*relate to*" the contacts of the defendant.[71]

Lastly, an exercise of specific jurisdiction must be "reasonable," which includes considering "the burden on the defendant," "the forum State's interest in adjudicating the dispute," "the plaintiff's interest in obtaining convenient and effective relief," "the interstate judicial system's interest in obtaining the most efficient resolution of controversies," and the "shared interest of the several States in furthering fundamental substantive social policies."[72]

Importantly, when the claim(s) of the plaintiff sufficiently "relate to" those contacts the defendant must "present a *compelling case* that the presence of some other

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69. *Burger King*, 412 U.S. at 462.

70. *See, e.g.*, *Keeton v. Hustler, Inc.*, 465 U.S. 770, 779 (1984).

71. *Ford*, 592 U.S. at 362.

72. Citing *World-Wide Volkswagen Corp. v. Woodson, supra,* 444 U.S. at 292.

considerations would render jurisdiction unreasonable, which usually may be accommodated through means short of finding jurisdiction unconstitutional.[73] (Emphasis and italics supplied).

b. The Many Branding and Marketing Benefits that Sompo's Corporate Predecessor Yasuda Realized from Displaying *Sunflowers* for 3.5 Months at the Chicago Exhibition in 2001-2002 By Conjoining its Corporate Image with the Painting Through Extensive U.S. and International Publicity More Than Satisfy the Prescribed *Quid Pro Quo* Metric of *International Shoe* and *Ford Motor* for Asserting Specific Jurisdiction

By displaying the Painting at the Exhibition the Defendants received many discrete benefits. These include the normative commercial benefits that *Ford Motor Co.* identified Ford as enjoying through its extensive commercial activities in Montana: "'the benefits and protections of [their] laws' – the enforcement of contracts, the defense of property, the resulting formation of effective markets."[74]

But the Exhibition also conferred many additional benefits upon Yasuda. These included: 1) generating immense publicity about both the Painting and Yasuda, and celebrating Yasuda's ownership and exclusive control of this iconic masterpiece; 2) furthering Yasuda's long-

73. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477 (1985).

74. *Ford Motor Co.*, 592 US. at 367.

standing corporate agenda – and rationale for acquiring *Sunflowers* – to enhance its brand by equating its collective corporate identity with the Painting maximally; 3) burnishing the provenance of the Painting by including it in a prestigious international exhibition hosted by world famous cultural institution AIC in collaboration with the esteemed van Gogh Museum in Amsterdam; 4) benefitting from archetypal branding enabling the Defendants to borrow the distinctive character traits of van Gogh as a paradigmatically creative artist and the inviting warmth of *Sunflowers* and investing these traits in Yasuda before attentive Illinois, U.S. and international audiences (*see* Spangenberg Declaration at ¶¶ 8-33); and 5) receiving from the van Gogh Museum in Amsterdam – and as a *quid pro quo* for displaying the Painting in Chicago – its commitment to loan two van Gogh artworks to Yasuda for an exhibition in Tokyo the following year. *See, e.g.,* F.A.C. Exhibits 1, 17 and 18.

These copious Illinois benefits, however, spawned reciprocal obligations that Defendants breached which paragraph 106 of the First Amended Complaint enumerates and which included violating many federal statutes including, *inter alia*, the National Stolen Property Act, 18 U.S.C. § 2314; 18 U.S.C. § 1341, proscribing mail fraud; 18 U.S.C. § 1343, proscribing wire fraud; 15 U.S.C. § 45 proscribing deceptive trade and unfair business practices and violating the Illinois Consumer Protection Act (815 ILCS 505/1).

c. Sompo's Continuing Commercial Exploitation of *Sunflowers* on its Corporate Website to Drive Insurance Business to its Brick-and-Mortar Office on Madison Street in Chicago Provides a Second Discrete Basis for Asserting Specific Jurisdiction Which the Court Also Ignored

Sompo's current and perpetual website exploitation of *Sunflowers* represent continuing commercial contacts with Illinois by which it drives business to its Madison Street office in Chicago. When a company employs a "national business model" as has Sompo, and conducts substantial business in Illinois, merely that its website is accessible elsewhere does not mitigate the conclusion that such company conducts business in Illinois sufficient to assert specific jurisdiction.[75] Accordingly, Sompo thereby *continues* to realize the many Illinois forum state benefits as discussed, *supra* – including especially the advantages of archetypal branding[76] – and to owe, correspondingly, the same reciprocal obligations.

Because the Petitioners' claims relate closely to Sompo's many breaches of duty – and emanate from the very commercial conduct that enables it to realize so many tangible benefits – specific jurisdiction attaches on this second basis as well.

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75. *See, e.g., Curry v. Revolution Laboratories, LLC*, 949 F.3d 385, 402 (7th Cir. 2020); *Illinois v. Hemi Group, LLC*, 622 F.3d 754, 758-59 (7th Cir. 2010); *uBid v. The GoDaddy Group, Inc.*, 623 F.3d 421, 427 (7th Cir. 2010); *Kukovec v. The Estee Lauder Companies*, 2022 WL 16744196 at *4 (N.D. Ill. 2022).

76. F.A.C. ¶¶ 86, 258.

d. The Exercise of Specific Jurisdiction Over Sompo is Otherwise Reasonable

Sompo's continuous and tortious use of *Sunflowers* to exploit the Illinois insurance market – while *knowingly* violating U.S. policy to restitute Nazi-confiscated artworks – precludes any possibility that it can establish that the exercise of jurisdiction would be "unreasonable" under any of the criteria identified, *supra* at pages 29-34 .

3. If Not Corrected, *Schoeps* Will Impair U.S. Foreign Policy to Restitute Nazi-Confiscated Artworks in Several Ways

First, *Schoeps* discredits the *bona fides* of the commitment of the U.S. Government to the objectives of the *Terezin Declaration* for which it campaigned intensively, and in which it has invested extensive foreign policy resources and moral capital and thereby impair – correspondingly – U.S. diplomatic credibility.

Second, by wrongfully negating a meritorious judicial claim to recover a Nazi-confiscated artwork at the threshold pleading and jurisdictional stages *Schoeps* undercuts the reasonable reliance interests of both the Petitioners as well as fellow *Terezin Declaration* signatory nations in the HEAR Act in a manner that likely will chill – rather than encourage – future claims as Congress and the President intend.

Third, if not corrected *Schoeps* will establish a skewed precedent for courts to wrongfully negate future meritorious judicial claims to recover Nazi-confiscated artworks in a manner that eludes the capability of

Congress and the President to rectify and so will perpetually impair U.S. foreign policy.

C. This Case Offers the Court a Signal Opportunity to Decide Whether the Doctrine of Equitable Estoppel Properly Can Apply Against the U.S. Government

1. The Public Policy-Based Doctrine of Equitable Estoppel Precludes the U.S. Government from Permitting Lower Courts to Misconstrue the HEAR Act to Deny Holocaust Victims and Their Petitioners Viable Judicial Remedies to Reclaim Nazi-Confiscated Artworks

While the Court has declared that estoppel against the U.S. government will lie only in exceptional instances, it repeatedly has declined to preclude this possibility.[77] As the Court has acknowledged – in certain circumstances "the public interest in ensuring that the Government can enforce the law free from estoppel might be outweighed by the countervailing interest of citizens in some minimum standard of decency, honor, and reliability in their dealings with their Government."[78] And as the Court quipped in *Heckler v. Community Health Services of Crawford County, Inc.*, "[t]o say to these appellants, 'The joke is on you. You shouldn't have trusted us,' is hardly worthy of our great government."[79]

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77. *See, e.g., Heckler v. Community Health Services of Crawford County, Inc.*, 467 U.S. 51 (1984)

78. *Id.* at 60-61.

79. *Id.* at 61 n. 13 (citation omitted).

Accordingly, estoppel against the U.S. government can arise when in addition to the elements of traditional estoppel the government engages in "affirmative misconduct" or behaves in a way that has or will cause an "egregiously unfair result."[80] Therefore, a showing of estoppel against the U.S. government requires: (1) that the government make a "'definite representation'"; (2) upon which the claimant relied in such as manner as to change its position for the worse; (3) the reliance of the claimant was reasonable; and (4) the government engaged in "'affirmative misconduct'" or in conduct causing an "egregious result."[81]

The erroneous *Schoeps* decision satisfies each criterion and – if not rectified – will occasion "egregiously unfair" results in several discrete ways based upon any reasonable judicial metric. First, the U.S. government – through the *Washington Principles* as well as the HEAR Act of 2016, and the recent HEAR Act Amendments of 2025[82] – has made "definite representations" to victims of Nazi persecution such as the Petitioners encouraging them both to develop at their own expense as well as to assert judicial claims to recover lost artworks. Moreover, the U.S. Government has assured them that if they invested what

80. *Ibid.* citing *GAO v. Gen. Accounting Office Pers. Appeals Bd.*, 698 F.2d 516, 526 (D.C. Cir. 1983). *See also Pierce v. Securities and Exchange Commission,* 786 F.3d 1027, 1038 (D.C. Cir. 2015), affirming that the requirements for equitable estoppel against the government are satisfied if the conduct of the government has or "will cause an egregiously unfair result."

81. *Trump*, *supra* note 17 at 206.

82. *See* Holocaust Expropriated Art Recovery Act of 2025, S. 1884, 119th Cong. (2025).

the Government concedes are extensive resources[83] – and necessarily reciprocal opportunity costs – in this venture that they would enjoy viable judicial remedies to recover these materials under the HEAR Act.

Second, the Petitioners have relied upon these representations in investing extensive resources both in developing as well as in prosecuting their claims to recover *Sunflowers* and for unjust enrichment.

Third, the Petitioners' reliance is inherently reasonable. For they have relied upon formal declarations of foreign policy by Congress and the Executive, as well as the stated primary purpose of the HEAR Act that the federal judiciary "ensure" that the laws that apply in judicial claims seeking the return of Nazi-confiscated artworks support the priority U.S. foreign policy.

Fourth, allowing the skewed *Schoeps* decision to stand will cause an "egregiously unfair" result in several discrete ways. Initially, *Schoeps* defeats the reasonable reliance of the Petitioners and other claimants that federal courts will ensure that the law that applies in this context will support such claims as the HEAR Act and declared U.S. foreign policy prescribe. Moreover – and as discussed – *Schoeps* wrongfully relegates claimants to judicial remedies under the variable and dysfunctional state law of commercial duress and to equally unpredictable state

83. HEAR Act § 2(6) **(Findings)** expressly finds that "[t]hose seeking recovery of Nazi-confiscated art must painstakingly piece together their cases from a fragmentary historical record ravaged by persecution, war, and genocide. This costly process often cannot be done within the time constraints imposed by existing law."

conflict of law principles.[84] *Schoeps* thereby discourages – or improperly "chills" – such claims.

In addition, by so negating effective judicial remedies to recover Nazi-confiscated artworks *Schoeps* sabotages U.S. foreign policy to restitute these materials and the attending U.S. diplomatic commitment in this regard to 47 fellow signatory nations to the *Terezin Declaration*. That the U.S. through the JUST Act and subsequent Report have publicly monitored the compliance of each fellow Terezin signatory nation with its commitment to the *Terezin Declaration* accentuates the failure of the U.S. to fulfill its own promise. And that the Report rebukes Poland and several other countries for failing to discharge their Terezin commitments further amplifies inevitable diplomatic embarrassment to the U.S. and validates allegations of hypocrisy.[85]

Finally – and most importantly – *Schoeps* wrongfully skews how the U.S. Constitution allocates foreign policy authority *exclusively* to the political branches (Congress and the Executive) and improperly interjects the federal judiciary as the final arbiter of foreign policy whenever Congress and the President assign it a discrete role in this context.

Moreover, by misapplying the elemental principles of pleading and specific jurisdiction at the threshold stage of litigation, as discussed *supra*, *Schoeps* precludes any possibility that Congress and the President can limit

84. *See* discussion, *supra* at page 3.

85. U.S. Dep't of State, *Report to Congress on Holocaust-Era Assets and Related Issues* 137 (2020).

the capability of the judiciary to disrupt foreign policy. For no amount of legislation reasserting and reaffirming the directive of Congress and the President that judicial claims for the restitution of Nazi-confiscated artworks be resolved upon their substantive merits can be availing if courts – as does *Schoeps* – wrongfully dismiss these claims at the incipient stages of litigation.

The U.S. Government similarly must be equitably estopped from repudiating its diplomatic commitment to 46 fellow *Terezin Declaration* signatory nations to ensure that the laws that apply in judicial claims seeking to restitute Nazi-confiscated artworks support the policies of the Declaration, especially since the Just Act Report castigates other *Terezin Declaration* signatories for failing to fulfill their prescribed commitments.

D. *Schoeps* - *De Facto* - Wrongfully Deprives Congress and the President of Their Exclusive Authority Under the U.S. Constitution to Conduct Foreign Policy and Provides a Timely and Topical Vehicle for the Court to Reaffirm the Limited Role of the Federal Judiciary in Foreign Affairs

Finally, the consequences and effect of *Schoeps* are nothing less than to empower the federal judiciary to thwart the exclusive role that the U.S. Constitution assigns Congress and the President in both formulating and implementing foreign policy.

CONCLUSION

For the foregoing reasons, the petition should be granted.

DATED: April 22, 2026

Respectfully submitted,

JOHN J. BYRNE, JR.
Counsel of Record
THOMAS J. HAMILTON
BYRNE GOLDENBERG
& HAMILTON PLLC
1025 Connecticut Avenue, NW
Washington, DC 20036
(202) 857-9775
jjb@bghpllc.com
tjh@bghpllc.com

Counsel for Petitioners

APPENDIX

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APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT, DECIDED NOVEMBER 21, 2025

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 25-1405

JULIUS H. SCHOEPS, *et al.*,

Plaintiffs-Appellants,

v.

SOMPO HOLDINGS, INC., *et al.*,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 1:22-cv-07013 — **Jeremy C. Daniel**, *Judge.*

ARGUED SEPTEMBER 18, 2025 — DECIDED NOVEMBER 21, 2025

Before RIPPLE, LEE, and PRYOR, *Circuit Judges.*

RIPPLE, *Circuit Judge.* Julius Schoeps, Florence von Kesselstatt, and Britt-Marie Enhoerning,[1] acting as the

1. Mr. Schoeps is a German citizen residing in Berlin, Germany. Ms. Enhoerning is a dual citizen of the United States and Sweden, residing in Sweden. Ms. Kesselstatt is a resident of

heirs of Paul von Mendelssohn-Bartholdy, a German art collector who was persecuted by the Nazi government, brought this action against Sompo Holdings, Inc. ("Sompo Holdings"), Sompo International Holdings Ltd. ("Sompo International"), Sompo Japan Insurance, Inc. ("Sompo Japan"), and Sompo Fine Art Foundation ("Sompo Foundation").[2] They seek to recover *Sunflowers*, a painting by Vincent van Gogh. According to the allegations of the complaint, the defendants wrongfully converted the painting and exploited it for financial gain.

For the reasons set forth in this opinion, we affirm the judgment of the district court.

Munich, Germany. Ms. Kesselstatt's citizenship is not specified in the complaint. The plaintiffs do not invoke the jurisdiction of the district court on the ground of diversity.

2. Sompo Japan is incorporated in Japan. Its headquarters and principal place of business are also in Japan, although it has subsidiaries throughout the world. The other three defendants are affiliates of Sompo Japan. Sompo International is incorporated in Bermuda and has its principal place of business in Bermuda. Sompo International was established in 2017. Sompo Foundation is incorporated in Japan and has its principal place of business in Japan. Sompo Foundation was established in 1976 as a public interest corporation. Its activities include collecting and preserving art for display in the Sompo Museum of Art in Tokyo, where *Sunflowers* is currently on permanent display. Sompo Holdings is incorporated in Japan and has its principal place of business in Tokyo. It is the parent company of Sompo Japan, Sompo International, and Sompo Foundation. Sompo Holdings was established in 2010. The Sompo family of companies (except for Sompo Foundation) engages in the sale of property and casualty insurance. In conducting their business, the Sompo companies coordinate with each other to some degree.

Appendix A

I

BACKGROUND

A. Facts

This appeal comes to us from the district court's grant of a motion to dismiss under Rules 12(b)(1) and 12(b)(2) of the Federal Rules of Civil Procedure. We therefore take as true the allegations of the complaint and base this present recitation on those allegations. However, we also may rely on each party's written declarations, resolving all factual disputes in the plaintiffs' favor. *B.D. ex rel. Myers v. Samsung SDI Co.*, 143 F.4th 757, 763 (7th Cir. 2025).

Vincent van Gogh painted *Sunflowers* in 1888. Paul von Mendelssohn-Bartholdy, a German banker and art collector, later acquired the painting. Mendelssohn-Bartholdy was the co-owner and director of an international bank, Mendelssohn & Co., which was one of the five largest private banks in Germany. He also was a prominent member of the finance industry and held a seat on the board of the Berlin Stock Exchange.

When the Nazi Party came to power, it targeted Mendelssohn-Bartholdy for persecution because he was Jewish. Throughout the 1930s, he suffered increasingly severe sanctions that ultimately eroded his livelihood. In 1934, he was removed from participation in the Reich Insurance Corporation and the Central Union of German Banking and Bankers. He also was removed from the board of the Berlin Stock Exchange. Mendelssohn & Co. was transferred forcibly to non-Jewish ownership.

Appendix A

Finding himself in an untenable financial situation, Mendelssohn-Bartholdy had to liquidate his art collection. In 1934, he placed *Sunflowers* on consignment with Paul Rosenberg, a Parisian art dealer. Rosenberg sold *Sunflowers* to Edith Beatty, a British-American heiress. *Sunflowers* was sold again in 1987 at Christie's auction house in London. It was purchased for $40 million by Yasuda Fire and Marine Insurance Company ("Yasuda"), the predecessor-in-interest of defendant Sompo Japan. Yasuda kept *Sunflowers* in Japan until 2001. It then loaned the painting to the Art Institute of Chicago for temporary exhibition. That exhibition—titled "Van Gogh and Gauguin: The Studio of the South"—lasted approximately four months, from September 2001 to January 2002. Following the Chicago exhibition, the Van Gogh Museum in Amsterdam displayed *Sunflowers* for approximately four months. As part of its loan agreements with the Art Institute of Chicago and the Van Gogh Museum, Yasuda received reciprocal promises from both to lend Van Gogh paintings to an exhibition in Tokyo in 2003.

While coordinating the exhibition in Chicago, a representative of Yasuda emailed a representative of the Art Institute of Chicago, stating concerns about the provenance of *Sunflowers* and the possibility that it was Nazi-looted art.[3] They concluded that the provenance was

3. In an email to both the Art Institute of Chicago and the Van Gogh Museum, a Yasuda representative stated: "In regard to the ownership issue, we can not [sic] change the ownership during this loan period under no circumstances even Nazis [sic] confiscation problem may arise in America and in Holland. We would like to include the clear terms in the loan agreement to

"clear."[4] *Sunflowers* returned to Japan in 2002, where it has remained.

In 2002, following a merger, Yasuda changed its name to Sompo Japan Insurance, Inc. Sompo Japan remains the owner of *Sunflowers* to this day.

Sompo International's website states that "Sompo International is backed by the financial strength of Sompo Holdings, Inc., which holds more than $100 billion in total assets."[5] Sompo Holdings and Sompo International have interlocking office space in Tokyo and at least four individuals hold executive positions in both companies. Additionally, Sompo Holdings has encouraged its stakeholders and clientele to view the Sompo family of companies as "One Sompo." The corporate family has a large global footprint, including approximately 80,000 employees in 228 cities across thirty countries.

Sompo Holdings and Sompo International each maintain separate websites that are accessible internationally,

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protect our paintings against this problem." R.39-1. In another email, they wrote "[w]e are deeply concerned about our Gogh' and Gauguin' provenance. We think our two works have nothing to do with Natilooted [sic] art, but we are not 100% sure. Could you advise us with your suggestion on this issue?" R.39-16.

4. R.39-17. Plaintiffs allege that the Art Institute of Chicago and Yasuda colluded to file a false application with the United States Department of State to obtain assurance that the painting would not be seized as Nazi contraband. Sompo Japan filed a declaration refuting this factual allegation. R.58-2, ¶ 17.

5. R.39-8.

including in Illinois. The Sompo Holdings website contains an image of *Sunflowers*. Sompo International's website includes a page stating that it has an office in Chicago, Illinois. However, the "Sompo International" office in Chicago is operated by a Sompo International subsidiary called Endurance Services Limited ("Endurance"), which uses the trade name "Sompo International" and the Sompo International logo to sell insurance in Illinois.[6] None of the defendants directly write insurance or do business in Illinois.[7]

In 2022, the plaintiffs, through their counsel, contacted Sompo Holdings and requested a meeting to discuss and settle their claim to *Sunflowers*. Sompo Holdings refused the meeting, expressing doubt about the jurisdiction of

6. R.72-1, ¶¶ 9, 10; R.39-6.

7. Defendants support this claim with a series of declarations, which the plaintiffs have not refuted. *See* R.58-1; R.58-2; R.58-3; R.58-4. As stated above, the Sompo corporate family does include at least one entity, Endurance, that sells insurance within Illinois. According to the defendants, Endurance is an indirect subsidiary of Sompo International. R.72-1, ¶ 10. Endurance sells insurance under the tradename "Sompo International" and leases office space in Chicago, Illinois for that purpose. Federal due process does not permit personal jurisdiction premised on corporate affiliation alone "where corporate formalities are substantially observed and the parent does not exercise an unusually high degree of control over the subsidiary." *Cent. States, Se. & Sw. Areas Pension Fund v. Reimer Express World Corp.*, 230 F.3d 934, 943 (7th Cir. 2000). As explained below, it would make no difference in this case even if Endurance's activities in Illinois could be attributed to one or more of the defendants because the sale of insurance does not relate to the plaintiffs' claims.

Illinois courts and the applicability of United States law. This lawsuit followed.

B. Proceedings in the District Court

The plaintiffs brought this action in the United States District Court for the Northern District of Illinois. They sought the recovery of *Sunflowers* (or alternatively, the current fair value of the painting), damages, and injunctive relief. For our analysis, their claims may be categorized in two groups. The first group contains state law claims for replevin (Count I), conversion (Count II), trover (Count III), imposition of a constructive trust (Count IV), unjust enrichment (Count V), breach of fiduciary duty (Counts VI and VII), and slander of title (Count VIII). The second group contains claims for unjust enrichment and restitution under federal common law (Counts IX and X) and also invokes what it terms the court's "Plenary Equitable Authority ... under Article III, Section 2 of the U.S. Constitution" (Counts XI and XII).

With respect to the timeliness of their claims, the plaintiffs relied entirely on the federal Holocaust Expropriated Art Recovery Act of 2016, Pub. L. No. 114-308, 130 Stat. 1524 (2016) ("HEAR Act"). The HEAR Act preempts state and federal statutes of limitations for civil claims to recover artwork lost between 1933 and 1945 because of Nazi persecution. *Id.* §§ 4(3), 5(a). The Act allows litigants to bring such civil claims within six years of the actual discovery of the identity and location of the artwork and of a plaintiff's possessory interest in the artwork. *Id.* § 5(a). However, the HEAR Act does not itself supply a cause of action. *Id.* § 5(f).

The defendants moved to dismiss the complaint. They argued a lack of standing, a lack of subject matter jurisdiction, a lack of personal jurisdiction, and *forum non conveniens*. After ruling that the plaintiffs had standing, the district court dismissed all the claims. It first turned to the second group of claims and dismissed Counts IX, X, XI, and XII for lack of federal subject matter jurisdiction. It concluded that no such claims existed under federal common law because the plaintiffs had failed to show that there was a conflict between federal policy and Illinois state law. Moreover, continued the court, the invocation of the court's "plenary equitable authority" did not permit it to hear claims that do not arise under federal law or diversity jurisdiction.

The court then turned to the counts in the first group. By way of a footnote, it held that the HEAR Act's extension of the state limitations period for these state claims was sufficient to vest the district court with federal subject matter jurisdiction. In that respect, it expressed agreement with the decision of the United States District Court for the Eastern District of Pennsylvania in *Holtzman as Tr. of Elizabeth McManus Holtzman Irrevocable Trust v. Philadelphia Museum of Art*, No. 22-cv-0122, 2022 U.S. Dist. LEXIS 120490, 2022 WL 2651851, at *7 (E.D. Pa. July 7, 2022). In that case, the Pennsylvania district court had held that the extension of a state limitations period for a cause of action pursuant to the HEAR Act was sufficient to vest a district court with federal question jurisdiction. The Pennsylvania district court reasoned that the vindication of the plaintiffs' state law claims depended on the interpretation and application

of the HEAR Act, a task that presented substantial issues of federal law. In this case, the district court decided in summary fashion that it had federal question jurisdiction over the state-based claims. But it then devoted the bulk of its opinion to determining that it lacked personal jurisdiction over the defendant corporations and that dismissal of Counts I to VIII was therefore appropriate.

II

DISCUSSION

The plaintiffs now appeal the district court's judgment. They submit that the district court erred in dismissing Counts IX to XII for lack of subject matter jurisdiction and in dismissing Counts I to VIII for lack of personal jurisdiction. They also maintain that the court abused its discretion by refusing to permit the plaintiffs to file a second amended complaint. We review de novo the denial of the motion to dismiss; we review the denial of leave to file a second amended complaint for abuse of discretion. We will address these issues in the same order as the district court.

A.

As we noted earlier, the district court first addressed the allegations in Counts IX to XII. These counts invoke explicitly the "federal question" jurisdiction of the district court under 28 U.S.C. § 1331, and we therefore must determine whether the district court had the authority to adjudicate these claims on that basis.

Appendix A

We begin with the allegations of the complaint. The plaintiffs set forth claims for restitution and unjust enrichment under federal common law (Counts IX and X). Also, in Counts XI and XII, they seek the same relief under what they describe as the court's "Plenary Equitable Authority ... under Article III, Section 2 of the U.S. Constitution."

1.

With respect to Counts XI and XII, the plaintiffs take the view that a district court has inherent equitable authority under the Constitution to fashion restitution and unjust enrichment remedies and is deprived of that authority only if Congress negates that authority by prescribing discreet statutory remedies either expressly or by implication. Because the HEAR Act does not expressly deprive the district court of its equitable authority and does not create a discreet statutory remedy, they continue, the court retains the equitable authority to issue unjust enrichment and restitution remedies.

We cannot accept the plaintiffs' view. It overlooks the fundamental principle that a federal court has no authority to imply a remedy unless that remedy is predicated on a cognizable cause of action. *See Davis v. Passman*, 442 U.S. 228, 239, 99 S. Ct. 2264, 60 L. Ed. 2d 846 (1979) ("If a litigant is an appropriate party to invoke the power of the courts, it is said that he has a 'cause of action' under the statute, and that this cause of action is a necessary element of his 'claim.' So understood, the question whether a litigant has a 'cause of action' is analytically distinct and

prior to the question of what relief, if any, a litigant may be entitled to receive."); *cf. Commodity Futures Trading Comm'n v. Schor*, 478 U.S. 833, 848, 106 S. Ct. 3245, 92 L. Ed. 2d 675 (1986) ("Article III does not confer on litigants an absolute right to the plenary consideration of every nature of claim by an Article III court.").

Here, the text of the statute is clear: "Nothing in this Act shall be construed to create a civil claim or cause of action under Federal or State law." HEAR Act § 5(f). It clearly would be inconsistent with the text and design of the statute to find an implied federal cause of action.[8] If there is no federal cause of action, there can be no implied remedy.

2.

Counts IX and X fare no better. Decades of case law firmly establish that federal courts can create federal common law only when "strict conditions" are satisfied. *Rodriguez v. Fed. Deposit Ins. Corp.*, 589 U.S. 132, 135-36, 140 S. Ct. 713, 206 L. Ed. 2d 62 (2020). Federal common law must either be authorized by Congress or "necessary to protect uniquely federal interests." *Id.* at 136 (quoting *Texas Indus., Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 640, 101 S. Ct. 2061, 68 L. Ed. 2d 500 (1981)). Federal common law is necessary to protect uniquely federal interests when either "the authority and duties of the United States as sovereign are intimately

8. The Court of Appeals for the Second Circuit has refused to create "a federal common law cause of action for replevin" under the HEAR Act. *Zuckerman v. Metropolitan Museum of Art*, 928 F.3d 186, 195, n.9 (2d Cir. 2019).

involved" or when "the interstate or international nature of the controversy makes it inappropriate for state law to control." *Texas Indus., Inc.*, 451 U.S. at 641.

Despite these well-established principles, the plaintiffs argue that the district court had subject matter jurisdiction over Counts IX and X, which seek restitution and unjust enrichment under federal common law, because the HEAR Act implicates United States foreign policy. In the plaintiffs' view, *American Insurance Ass'n v. Garamendi*, 539 U.S. 396, 420-25, 123 S. Ct. 2374, 156 L. Ed. 2d 376 (2003), supports their contention that the HEAR Act implicates United States foreign policy. In that case, the Supreme Court determined that a California law imposing economic sanctions on insurers to the benefit of Holocaust-era insurance claimants undermined the President's authority where the President already had entered into specific agreements with Germany and Austria to address Holocaust-era insurance claimants. The Court explained that the resolution of insurance claims held by United States residents against foreign nations has long been considered to fall within the executive responsibility over foreign affairs. *Id.* at 420 (citing *Dames & Moore v. Regan*, 453 U.S. 654, 679, 101 S. Ct. 2972, 69 L. Ed. 2d 918 (1981)). The Court stated further that the "exercise of the federal executive authority means that state law must give way where, as here, there is evidence of clear conflict between the policies adopted by the two." *Id.* at 421.

So too, when state law clearly conflicts with a specific foreign policy of the United States, state law cannot control. For instance, in *Ungaro-Benages v. Dresdner Bank AG*, 379 F.3d 1227 (11th Cir. 2004), the Eleventh

Circuit applied federal common law because there was an executive agreement between the United States and Germany addressing litigation against German companies arising from the Nazi era. *Id.* at 1233. Because the state law at issue conflicted with that executive agreement, federal common law applied.

However, when there is no evidence that the application of state law would interfere with the foreign policy of the United States, state law can govern the dispute. *Von Saher v. Norton Simon Museum of Art at Pasadena*, 754 F.3d 712 (9th Cir. 2014), articulates firmly that principle. Although the court described United States policy on the restitution of Nazi-looted art,[9] it explicitly held that under *Garamendi*, the plaintiff's state law restitution and conversion claims were not preempted by federal law and that the state law at issue did not conflict with United States foreign policy on Nazi-expropriated

9. "In sum, U.S. policy on the restitution of Nazi-looted art includes the following tenets: (1) a commitment to respect the finality of 'appropriate actions' taken by foreign nations to facilitate the internal restitution of plundered art; (2) a pledge to identify Nazi-looted art that has not been restituted and to publicize those artworks in order to facilitate the identification of prewar owners and their heirs; (3) the encouragement of prewar owners and their heirs to come forward and claim art that has not been restituted; (4) concerted efforts to achieve expeditious, just and fair outcomes when heirs claim ownership to looted art; (5) the encouragement of everyone, including public and private institutions, to follow the Washington Principles; and (6) a recommendation that every effort be made to remedy the consequences of forced sales." *Von Saher v. Norton Simon Museum of Art at Pasadena*, 754 F.3d 712, 721 (9th Cir. 2014).

art. *Von Saher*, 754 F.3d at 723-24.[10] The Ninth Circuit noted that, unlike in *Garamendi*, there was no Holocaust-specific state legislation at issue, no claim for relief against a foreign government, and the defendant museum "had no connection to the wartime injustices committed." *Id.*

In sum, the plaintiffs have established that United States foreign policy supports, as a general proposition, restitution of Nazi-looted art between private parties. However, they have not established that state law causes of action necessarily conflict with that United States foreign policy in a way that requires the application of federal common law rather than state law.[11]

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10. The Ninth Circuit was tasked with determining whether the plaintiff's lawsuit, which sought conversion and replevin under a state statute of general applicability, undermined the federal policy on the restitution of Nazi-expropriated art by challenging a foreign nation's determination as to the ownership of the painting at issue. *Id.* at 719.

11. The plaintiffs discuss the Terezin Declaration, but they have failed to demonstrate any conflict between it and state law. In 2009, the United States participated in the Holocaust Era Assets Conference, resulting in the Terezin Declaration, which in part represented a commitment to "ensure that their legal systems or alternative processes, while taking into account the different legal traditions, facilitate just and fair solutions with regard to Nazi-confiscated and looted art, and to make certain that claims to recover such art are resolved expeditiously and based on the facts and merits of the claims and all the relevant documents submitted by all parties." Prague Holocaust Era Assets Conference, *Terezin Declaration* (June 30, 2009), https://www.state.gov/prague-holocaust-era-assets-conferenceterezin-declaration. Unlike the agreement between the United States

Moreover, here we have an explicit congressional expression of confidence in the capacity of state law to address the matter effectively without undue interference with the conduct of the Country's foreign policy. Congress enacted the HEAR Act to ensure the availability of state law claims to plaintiffs who would otherwise have no such recourse because of the state statutes of limitations. HEAR Act § 2(6)-(7). In doing so, it specifically stated that the purpose of the HEAR Act is to "ensure that laws governing claims to Nazi-confiscated art and other property further United States policy as set forth in the Washington Conference Principles on Nazi Confiscated Art, the Holocaust Victims Redress Act, and the Terezin Declaration." HEAR Act § 3(1). There can be no serious doubt that Congress has made the judgment that reliance on claims based on state law was consistent with these United States foreign policy objectives.

The district court properly dismissed Counts IX to XII. These claims do not implicate the federal question jurisdiction of the district court.

B.

1.

We now turn to the allegations in Counts I to VIII. As we noted earlier, relying on the analysis of the

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and Germany in *Ungaro-Benages v. Dresdner Bank AG*, 379 F.3d 1227 (11th Cir. 2004), there is no apparent conflict between the United States's commitment in the Terezin Declaration and the application of state law as envisioned by the HEAR Act.

Eastern District of Pennsylvania in *Holtzman as Tr. of Elizabeth McManus Holtzman Irrevocable Trust v. Philadelphia Museum of Art*, No. 22-cv-0122, 2022 U.S. Dist. LEXIS 120490, 2022 WL 2651851, at *7 (E.D. Pa. July 7, 2022), the district court held summarily that it had federal question jurisdiction over these state law claims. This determination is not contested by the parties and, consequently, it has not been briefed before us.

Our usual first task is to undertake an independent investigation of our subject matter jurisdiction over each count before us. Here, however, where the subject matter jurisdiction question involves an "unruly"[12] doctrine on which we have little independent analysis by the district court and no appellate briefing by the parties, we believe that the most prudent course is to decide this case on the alternate ground of lack of personal jurisdiction over the parties. *See Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 585, 119 S. Ct. 1563, 143 L. Ed. 2d 760 (1999). The personal jurisdiction question is squarely presented, elaborately discussed by the district court and the parties, and susceptible to easy resolution.

2.

We review de novo a district court's dismissal for lack of personal jurisdiction. *Curry v. Revolution Lab'ys, LLC*, 949 F.3d 385, 392-93 (7th Cir. 2020). We must accept all well-pleaded facts alleged in the complaint as true and

12. *Gunn v. Minton*, 568 U.S. 251, 258, 133 S. Ct. 1059, 185 L. Ed. 2d 72 (2013).

resolve any factual disputes in the plaintiffs' favor. *Felland v. Clifton*, 682 F.3d 665, 672 (7th Cir. 2012). The plaintiffs bear the burden of establishing personal jurisdiction, but when the issue is raised on a motion to dismiss, that burden is met by making a *prima facie* showing of jurisdictional facts. *Curry*, 949 F.3d at 393.

When no federal statute authorizes nationwide service of process, personal jurisdiction is governed by the law of the forum state, which in this case is Illinois. *Tamburo v. Dworkin*, 601 F.3d 693, 700 (7th Cir. 2010). Illinois's long-arm statute allows for personal jurisdiction to the full extent authorized by the Illinois and United States Constitutions.[13]

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13. The Illinois Constitution provides that personal jurisdiction is proper "only when it is fair, just, and reasonable to require a nonresident defendant to defend an action in Illinois, considering the quality and nature of the defendant's acts which occur in Illinois or which affect interests located in Illinois." *Rollins v. Ellwood*, 141 Ill. 2d 244, 565 N.E.2d 1302, 1316, 152 Ill. Dec. 384 (Ill. 1990); ILL. CONST. art. 1, § 2; *RAR, Inc. v. Turner Diesel, Ltd.*, 107 F.3d 1272, 1276 (7th Cir. 1997) (quoting *Rollins*, 565 N.E.2d at 1316). We have previously observed that the Illinois Due Process Clause is, at least hypothetically, more restrictive than the Fourteenth Amendment Due Process Clause. *RAR, Inc.*, 107 F.3d at 1276 ("The Illinois Supreme Court has made clear that the Illinois due process guarantee is not necessarily co-extensive with federal due process protections."); *Illinois v. Hemi Group LLC*, 622 F.3d 754, 757 (7th Cir. 2010). Thus, it is possible that the federal constitution would permit personal jurisdiction in a situation where the Illinois Constitution would not. However, no arguments to that effect have been raised in this case. For purposes of our present analysis, if jurisdiction is not

To satisfy due process, a foreign defendant must have sufficient contacts with a forum to ensure that the exercise of personal jurisdiction over that defendant would "not offend traditional notions of fair play and substantial justice." *International Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S. Ct. 154, 90 L. Ed. 95 (1945) (internal quotation and citation omitted). There are two types of personal jurisdiction: general and specific. The parties agree that the district court cannot exercise general personal jurisdiction over the defendants. Therefore, we need to address only whether specific personal jurisdiction is proper.

Recently, in *B.D. ex rel. Myers v. Samsung SDI Co.*, 143 F.4th 757, 765 (7th Cir. 2025), we began our examination of the requirements for exercising specific personal jurisdiction by setting forth the Supreme Court's long-standing articulation of the basic judicial undertaking: "Whether specific personal jurisdiction exists turns on 'the relationship among the defendant, the forum, and the litigation.'" *Id.* (quoting *Walden v. Fiore*, 571 U.S. 277, 283-84, 134 S. Ct. 1115, 188 L. Ed. 2d 12 (2014)).[14] We further

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available under the federal constitutional standard, it will not be available under the Illinois standard. *KM Enters., Inc. v. Global Traffic Techs., Inc.*, 725 F.3d 718, 732 (7th Cir. 2013). Therefore, it is only necessary to conduct the federal analysis, *id.*, and the only relevant inquiry is whether the exercise of personal jurisdiction is permissible under the Due Process Clause of the Fourteenth Amendment.

14. The phrase "the relationship among the defendant, the forum, and the litigation" has been the analytical touchstone of the Supreme Court's exploration of the due process limitations on

a state's exercise of personal jurisdiction for many years. Among contemporary cases, *Shaffer v. Heitner*, 433 U.S. 186, 97 S. Ct. 2569, 53 L. Ed. 2d 683 (1977), was the first occasion where we encountered the Supreme Court's use of this phrase. *Id.* at 204 ("Thus, the relationship among the defendant, the forum, and the litigation, rather than the mutually exclusive sovereignty of the States on which the rules of *Pennoyer* rest, became the central concern of the inquiry into personal jurisdiction."). *See also Rush v. Savchuk*, 444 U.S. 320, 327, 100 S. Ct. 571, 62 L. Ed. 2d 516 (1980) ("In determining whether a particular exercise of state-court jurisdiction is consistent with due process, the inquiry must focus on 'the relationship among the defendant, the forum, and the litigation.'" (quoting *Shaffer*, 433 U.S. at 204)); *Calder v. Jones*, 465 U.S. 783, 788, 104 S. Ct. 1482, 79 L. Ed. 2d 804 (1984) ("In judging minimum contacts, a court properly focuses on 'the relationship among the defendant, the forum, and the litigation.'" (quoting *Shaffer*, 433 U.S. at 204)); *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414, 104 S. Ct. 1868, 80 L. Ed. 2d 404 (1984) ("When a controversy is related to or 'arises out of' a defendant's contacts with the forum, the Court has said that a 'relationship among the defendant, the forum, and the litigation' is the essential foundation of in personam jurisdiction." (quoting *Shaffer*, 433 U.S. at 204)); *Keeton v. Hustler Mag., Inc.*, 465 U.S. 770, 775, 104 S. Ct. 1473, 79 L. Ed. 2d 790 (1984) ("In judging minimum contacts, a court properly focuses on 'the relationship among the defendant, the forum, and the litigation.'" (quoting *Shaffer*, 433 U.S. at 204)); *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985) ("Where a forum seeks to assert specific jurisdiction over an out-of-state defendant who has not consented to suit there, this 'fair warning' requirement is satisfied if the defendant has 'purposefully directed' his activities at residents of the forum, and the litigation results from alleged injuries that 'arise out of or relate to' those activities." (internal citations omitted) (first quoting citing *Keeton*, 465 U.S. at 774; and then *Helicopteros Nacionales de Colombia,*

noted that we, along with other circuits, have distilled this basic guidance into a more practical application. First, the defendant must "purposefully avail itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Id.* (quoting *Hanson v. Denckla*, 357 U.S. 235, 78 S. Ct. 1228, 2 L. Ed. 2d 1283 (1958)) (citation modified). Second, there must be an adequate connection between the defendant's activities in the forum and the suit, such that the suit "arise[s] out of or relate[s] to" the forum contacts. *Id.* at 766 (quoting *Bristol-Myers Squibb Co. v. Superior Ct.*, 582 U.S. 255, 262, 137 S. Ct. 1773, 198 L. Ed. 2d 395 (2017)). Third, personal jurisdiction must accord with notions of fairness. *Id.* The approach set forth in *Samsung* must guide our present task of assessing whether the district court had personal jurisdiction over the Sompo entities.

S.A., 466 U.S. at 414)); *Walden v. Fiore*, 571 U.S. 277, 283-84, 134 S. Ct. 1115, 188 L. Ed. 2d 12 (2014) ("The inquiry whether a forum State may assert specific jurisdiction over a nonresident defendant focuses on the relationship among the defendant, the forum, and the litigation." (citation modified)); *Daimler AG v. Bauman*, 571 U.S. 117, 126, 134 S. Ct. 746, 187 L. Ed. 2d 624 (2014) ("Following *International Shoe*, 'the relationship among the defendant, the forum, and the litigation, rather than the mutually exclusive sovereignty of the States on which the rules of *Pennoyer* rest, became the central concern of the inquiry into personal jurisdiction.'" (quoting *Shaffer*, 433 U.S. at 204)); *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 592 U.S. 351, 371, 141 S. Ct. 1017, 209 L. Ed. 2d 225 (2021) ("For all the reasons we have given, the connection between the plaintiffs' claims and Ford's activities in those States—or otherwise said, the 'relationship among the defendant, the forum[s], and the litigation'—is close enough to support specific jurisdiction." (quoting *Walden*, 571 U.S. at 284)).

On the facts before us, the second consideration articulated in *Samsung* provides the key guidance: There must be an adequate connection between the defendants' activities in the forum and the suit, such that the suit "arise[s] out of or relate[s] to" the forum contacts. *Id.* (quoting *Bristol-Myers Squibb Co.*, 582 U.S. at 262). In *Ford Motor Co. v. Montana Eighth Judicial District Court*, 592 U.S. 351, 141 S. Ct. 1017, 209 L. Ed. 2d 225 (2021), the Supreme Court clarified that such contacts do not need to have a strict causal relationship with the litigation. *Id.* at 361-62. It explained that the first half of the standard ("arise out of") relates to causation, while the second half ("relates to") "contemplates that some relationships will support jurisdiction without a causal showing." *Id.* at 362. Ford Motor Company admitted that it had purposefully availed itself of the forum through advertising, selling, and servicing its vehicles there. *Id.* at 361. It contested, however, personal jurisdiction on the basis that those contacts did not relate to the case at issue, which involved an accident in the forum state involving a Ford car that was purchased outside of the forum state. *Id.* at 355, 361. The Supreme Court held that personal jurisdiction was proper because the volume and nature of Ford's contacts with the forum were designed to induce consumers in that forum to engage in the type of behavior from which the case arose. *Id.* at 367.

Applying *Ford* in our *Samsung* decision, we pointed out that one of the limits of the "relates to" prong is the concept of "fair warning—knowledge that a particular activity may subject [the defendant] to the jurisdiction of a foreign sovereign." *Samsung SDI Co.*, 143 F.4th at 771

(quoting *Ford*, 592 U.S. at 360). We made clear that the defendants' activities in the forum must give them clear notice of the particular type of claims the plaintiffs are bringing. *Id.* at 771-72.

If the activities of its Illinois subsidiary could be imputed to Sompo International, it might reasonably foresee that it may be compelled to answer in an Illinois court for matters emanating from the operation of an office in Illinois. The existence of an office and the sale of insurance would give Sompo International clear notice, for example, of lawsuits relating to its office lease, its various employment agreements for Illinois-based employees, and the sale of their insurance products. However, these activities do not give clear notice to Sompo International that it may be sued over the ownership of a painting that its parent company purchased in Europe and regularly displays in Japan. *See Advanced Tactical Ordnance Sys., LLC v. Real Action Paintball, Inc.*, 751 F.3d 796, 801 (7th Cir. 2014) ("Specific jurisdiction must rest on the *litigation-specific* conduct of the defendant in the proposed forum state.").[15]

15. For the same reason, websites operated by Sompo Holdings and Sompo International do not provide the necessary litigation-related contacts. Even if these websites were used to sell insurance products to Illinois residents, see *NBA Properties, Inc. v. HANWJH*, 46 F.4th 614, 624 (7th Cir. 2022), that forum-related activity has no relevance to the claims in this litigation. The mere fact that an Illinois consumer can view an image of *Sunflowers* on the Sompo Holdings website does not change this conclusion. The display of an image of the painting on that website has no relation to any of the plaintiffs' claims.

The plaintiffs argue that insurance sales are related to *Sunflowers* because the defendants use *Sunflowers* to market their business. They submit that, under the prudent investor rule, Sompo Japan could not have purchased *Sunflowers* unless that purchase was "calculated to help Sompo market insurance."[16] Here, the plaintiffs argue for far too broad an application of the "arise out of or relates to" requirement. If such were the rule, then specific personal jurisdiction would exist over a corporation anywhere it did any business because its business would "relate to" all other acts of the corporation. Such reasoning simply cannot live in peace with *Walden, Ford*, and *Samsung*.

Wherever the plaintiffs' alleged injury occurred, it did not occur in Illinois. The exhibition in Chicago is only relevant to the extent that it facilitated Sompo Japan's sale of insurance in Illinois. But Sompo Japan sells no insurance in Illinois. Accordingly, the exhibition in Illinois does not create personal jurisdiction over Sompo Japan.[17]

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16. Plaintiffs' Reply Br. at 16.

17. While not binding on this court, two cases discussed by the parties help to demonstrate this issue. In *Barzilai v. Museum*, No. 153086/2022, 2022 N.Y. Misc. LEXIS 8563, 2022 WL 16856131, at *1-2 (N.Y. Sup. Ct. Nov. 10, 2022) a New York state court refused to exercise personal jurisdiction over the Israel Museum in an action for replevin and conversion of the Bird's Head Haggadah, which was stolen from its Jewish owner in the 1930s. Despite the fact that the Bird's Head Haggadah was displayed at an art exhibition at the New York Public Library for approximately four months in 1988 and 1989, the court found that due process would not permit the exercise of jurisdiction because "[w]hatever business the Israel

The exhibition in Illinois does not relate to the plaintiffs' conversion claim because the conversion was completed before the exhibition. Moreover, the parties agree that the painting was obtained by Sompo Japan's corporate predecessor in London. Accordingly, plaintiffs' alleged injuries for conversion and trover occurred in London.[18] The place of injury for plaintiffs' slander of title claims is most likely their domicile, which would be Germany and Sweden, so the defendants' actions leading to that injury

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Museum may engage in within New York, it is not substantially related to the claims asserted in the first two causes of action, that arose out of a theft and subsequent sale far away from New York." *2022 N.Y. Misc. LEXIS 8563*, [WL] at *3. Similarly, in *Graff v. Leslie Hindman Auctioneers, Inc.*, 342 F.Supp.3d 819, 826 (N.D. Ill. 2018), vacated on other grounds, No. 17 C 6748, 2019 U.S. Dist. LEXIS 243132, 2019 WL 13196397 (N.D. Ill. Feb. 12, 2019), the district court found no personal jurisdiction over a conversion claim where the defendant exercised dominion or control over two paintings in Arizona and later tried to auction them off in Illinois. Because the injury took place in Arizona, the subsequent auction in Illinois did not relate to Graff's claims. *Id.* (citing *Charash v. Oberlin Coll.*, 14 F.3d 291, 297 (6th Cir. 1994)). Contrary to the plaintiffs' arguments, the fact that these cases did not deal with Nazi confiscation does not undermine their explanatory value here.

18. The place of injury for conversion is the place where the property was converted by the defendant. *Charash*, 14 F.3d at 297. It is not clear where the breach of a duty to render aid to a tort victim occurs, but it was certainly not in Illinois. Typically, this duty attaches immediately upon committing the tort that renders the victim in need of aid. Restatement (Second) of Torts § 322 (A.L.I. 1965). Presumably, the injury occurs where the tortfeasor fails to act to prevent further harm. *Id.*; *see Taylor v. Meirick*, 712 F.2d 1112, 1117 (7th Cir. 1983).

and the injury itself occurred outside of Illinois.[19] In other words, Sompo Japan's relevant conduct, and the effects of that conduct, occurred in various European countries, rather than Illinois.

The place of injury for unjust enrichment is the place where the plaintiffs allegedly conferred the benefit on the defendant. *In re Sears, Roebuck & Co. Tools Mktg. & Sales Pracs. Litig.*, Nos. 05 C 4742 & 05 C 2623, 2006 U.S. Dist. LEXIS 92169, 2006 WL 3754823, at *2 (N.D. Ill. Dec. 18, 2006). Plaintiffs allege that Sompo Japan's predecessor Yasuda "commercially exploited" the painting by placing it in the Chicago exhibition.[20] They also allege in conclusory fashion that their claims for unjust enrichment "arise out of and relate to the commercial wrongdoing of Defendants in bringing the Painting to Illinois and displaying it at the van Gogh Exhibition in 2001"[21] and that Sompo Japan was seeking to "burnish[] its corporate image with the Painting throughout the U.S."[22] The district court concluded correctly that the only benefit that Sompo Japan allegedly received from the exhibition was "a reciprocal promise" from the Art Institute and Van

19. The place of injury for slander of title is typically the domicile of the plaintiff. *See Peacock v. Merrill*, No. 05-0377, 2009 U.S. Dist. LEXIS 149481, 2009 WL 10704516, at *15 (S.D. Ala. Nov. 17, 2009) (determining that slander of title occurred in the property owner's domicile because that is where the financial consequences are felt).

20. R.39, ¶ 253.

21. R.39, ¶ 109.

22. R.39, ¶ 253.

Gogh Museum to lend Van Gogh paintings to an exhibition in Tokyo the following year. Under *Bristol-Myers Squibb*, there is simply an insufficient connection between these claims and Illinois.

Because the defendants' contacts with Illinois are not related to the actions alleged in the complaint, we need not engage in further evaluation of whether the exercise of in personam jurisdiction over the defendants would comport with fair play and substantial justice. *See Samsung SDI Co.*, 143 F.4th at 775.

In summary, the second prong of the *Samsung* test presents a sure path to decision in the present case. There is simply an inadequate connection between the forum (Illinois) and the litigation to permit the exercise of in personam jurisdiction over the defendants. *See Bristol-Myers Squibb Co.*, 582 U.S. at 265. None of the claims here "arise out of or relate to" the exhibition in Illinois. *Id.* at 262 (citation modified); *see also Walden*, 571 U.S. at 291 (Nevada courts lacked jurisdiction because the "relevant conduct occurred entirely in Georgia").[23]

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23. The plaintiffs also argue that the district court abused its discretion by refusing their request to file a Second Amended Complaint to cure the jurisdictional deficiencies. Although the district court should have applied the more lenient Rule 15(a)(2) standard to their motion, *O'Brien v. Village of Lincolnshire*, 955 F.3d 616, 629 (7th Cir. 2020), its failure to do so here is of no consequence to this case. It is apparent from the district court's opinion dismissing the First Amended Complaint that nothing in the Second Amended Complaint would have altered its decision. R.74 at 22-23, 31; *O'Brien*, 955 F.3d at 629 ("[I]t is apparent from

CONCLUSION

The judgment of the district court is affirmed. Counts IX to XII present no federal cause of action and, in any event, the district court lacked in personam jurisdiction over the defendants. With respect to Counts I to VIII, we pretermit a ruling on subject matter jurisdiction, see *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 119 S. Ct. 1563, 143 L. Ed. 2d 760 (1999), and affirm the judgment of the district court on the ground that it lacked in personam jurisdiction over the defendants.

AFFIRMED

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the court's order and from the record that, ultimately, the court did not abuse its discretion."). Nor would anything in the Second Amended Complaint alter this court's decision.

APPENDIX B — FINAL JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT, DATED NOVEMBER 21, 2025

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 25-1405

Everett McKinley Dirksen
United States Courthouse
Room 2722 -
219 S. Dearborn Street
Chicago, Illinois 60604

Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

FINAL JUDGMENT

November 21, 2025

Before

KENNETH F. RIPPLE, *Circuit Judge*
JOHN Z. LEE, Circuit Judge
DORIS L. PRYOR, *Circuit Judge*

JULIUS H. SCHOEPS, *et al.*,

Plaintiffs-Appellants,

v.

SOMPO HOLDINGS, INC., *et al.*,

Defendants-Appellees

Appendix B

Originating Case Information:

District Court No: 1:22-cv-07013
Northern District of Illinois, Eastern Division
District Judge Jeremy C. Daniel

The judgment of the District Court is AFFIRMED, with costs, in accordance with the decision of this court entered on this date.

/s/ [Illegible]
Clerk of Court

APPENDIX C — ORDER OF DENIAL OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT, DATED JANUARY 22, 2026

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
Chicago, Illinois 60604

No. 25-1405
No. 1:22-cv-07013

Before

KENNETH F. RIPPLE, *Circuit Judge*
JOHN Z. LEE, *Circuit Judge*
DORIS L. PRYOR, *Circuit Judge*

January 22, 2026

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

Jeremy C. Daniel,
Judge.

JULIUS H. SCHOEPS, *et al.*,

Plaintiffs-Appellants,

v.

SOMPO HOLDINGS, *et al.*,

Defendants-Appellees.

Appendix C

ORDER

Plaintiffs-Appellants filed a Petition for Rehearing and Petition for Rehearing En Banc on December 18, 2025. No judge in regular active service has requested a vote on the petition for rehearing en banc, and all judges on the original panel have voted to DENY the petition for rehearing.

Accordingly, the Petition for Rehearing and Petition for Rehearing En Banc is DENIED.*

* Circuit Judge Rebecca Taibleson did not participate in the consideration of this petition for rehearing en banc.

APPENDIX D — MEMORANDUM OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION, FILED JUNE 3, 2024

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 22 CV 7013

JULIUS H. SCHOEPS, *et al.*,

Plaintiffs,

v.

SOMPO HOLDINGS, INC., *et al.*,

Defendants.

Filed June 3, 2024

MEMORANDUM OPINION AND ORDER

The plaintiffs, purported heirs of a German art collector who was persecuted by the Nazis, bring this action against Sompo Holdings, Inc. and its affiliates[1] (collectively, "Sompo") to recover a painting by Vincent Van Gogh. The defendants move to dismiss due to lack of

1. Sompo International Holdings Ltd., Sompo Fine Art Foundation, and Sompo Japan Insurance Inc.

personal jurisdiction, lack of subject matter jurisdiction, and *forum non conveniens.* (R. 57.) For the reasons set forth in this memorandum opinion, the Court grants the motion and dismisses the complaint for lack of personal jurisdiction.

BACKGROUND[2]

In 1888, Vincent Van Gogh left Paris and moved to Arles, a town in the south of France. (R. 39-3 at 14.) While waiting for his friend, Paul Gauguin, Van Gogh began working on a series of oil paintings of sunflowers. (*Id.*) Although his arrival in Arles marked the beginning of a period of "intense creativity" for Van Gogh, and arguably the pinnacle of his artistic career, his mental health quickly began to deteriorate. (*Id.*) About two months after Gauguin arrived in Arles, Van Gogh threatened him with a razor and, infamously, cut off part of his own left ear. (*Id.*) Although Van Gogh continued working and went on to complete his sunflowers series in 1889, he appears to have never fully recovered from this psychological break. (*Id.* at 22, 25.) He committed suicide the following year. (*Id.* at 25.)

After Van Gogh's death, one of his sunflower paintings ("*Sunflowers*") was acquired by Paul von Mendelssohn-Bartholdy, a prominent German banker and art collector. (R. 39 ("FAC") ¶ 127.)

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2. The facts in the background section are taken from the first amended complaint and the exhibits attached thereto and are presumed true for the purpose of resolving the motion to dismiss. *Virnich v. Vorwald*, 664 F.3d 206, 212 (7th Cir. 2011).

Appendix D

Sunflowers **- Vincent Van Gogh (1888)**

Mendelssohn-Bartholdy was a member of a well-known family whose relatives included composer Felix Mendelssohn and Enlightenment philosopher Moses Mendelssohn. (*Id.*) However, because he was Jewish, Mendelssohn-Bartholdy and his family were persecuted when Adolf Hitler and the Nazi Party came to power in Germany. (*Id.* ¶¶ 133–183.) Throughout the 1930s, Mendelssohn-Bartholdy was subjected to increasingly severe sanctions by the Nazi regime. (*See id.*) In 1934, he was ousted from the Reich Insurance Corporation and from the Central Union of German Banking and Bankers. (*Id.* ¶¶ 158, 162.) He was effectively removed from his role on the board of the Berlin Stock Exchange. (*Id.* ¶ 159.) Profits from his family bank, Mendelssohn & Co., declined precipitously. (*Id.* ¶¶ 173–74.) Eventually, pursuant to Nazi policies, the bank was forcibly transferred to non-Jewish ownership. (*Id.* ¶¶ 203–04.)

Mendelssohn-Bartholdy's increasingly dire circumstances forced him to begin liquidating his art collection, then one of the most prominent modern art collections in Europe. (*Id.* ¶¶ 184–99.) In 1934, he placed *Sunflowers* on consignment with Paul Rosenberg, a Parisian art dealer. (*Id.* ¶¶ 127, 193.) Rosenberg sold the painting to Edith Beatty, a British-American heiress. (*Id.* ¶¶ 208, 216, 239.) Decades later, in 1987, *Sunflowers* was sold again in a highly publicized auction at Christie's auction house in London. (*Id.* ¶¶ 2, 5.) The buyer was Yasuda Fire and Marine Insurance Company, a Japanese insurance company and the predecessor-in-interest of Defendant Sompo Holdings, Inc. (*Id.* ¶¶ 5, 30, 236–39.) Yasuda paid $40 million for the painting. (*Id.*)

Sunflowers remained in Japan until 2001, when it was sent abroad for display as part of an international Van Gogh exhibition. (*Id.* ¶ 70.) From September 22, 2001, to January 13, 2002, the painting was displayed at the Art Institute of Chicago ("AIC") in Chicago, Illinois. (*Id.* ¶¶ 5–6, 246–255.) From February 9, 2002, to June 2, 2002, the painting appeared in an exhibition at the Van Gogh Museum in Amsterdam. (R. 39-18.) It returned to Tokyo later that year. (*Id.*; R. 39-19 at 2.)

In 2016, Congress enacted the Holocaust Expropriated Art Recovery Act of 2016, Pub. L. No. 114-308, 130 Stat 1524 (2016) ("HEAR Act"). The HEAR Act preempts state law statutes of limitations for actions to recover property stolen or misappropriated by the Nazis between 1933 and 1945. *Id.* §§ 2(6), (7), 3(2). The Act allows litigants to file a claim to recover property within six years of "actually discover[ing]" either (a) the identity and location of the artwork or other property, or (b) a possessory interest of the claimant in the artwork or other property. *Id.* § 5(a).

The plaintiffs, Mendelssohn-Bartholdy's heirs, seek to use the lengthened statute of limitations established by the HEAR Act to recover *Sunflowers.* (*See generally* FAC.) They filed a twelve-count complaint against Sompo to recover the painting, its fair market value (allegedly $250 million) and damages. (*See id.*) The complaint asserts state law claims for replevin (Count I); conversion (Count II); trover (Count III); imposition of a constructive trust (Count IV); unjust enrichment (Count V); breach of fiduciary duty (Counts VI and VII); and slander of title (Count VIII). The plaintiffs also assert claims for

restitution and unjust enrichment under federal common law (Counts IX and X) and pursuant to the Court's "plenary equitable authority" Article III (Counts XI and XII). Sompo now moves to dismiss based on lack of standing, lack of personal jurisdiction, and *forum non conveniens.* (R. 57.)

LEGAL STANDARD

"Rule 12(b)(1) is the means by which a defendant raises a defense that the court lacks subject-matter jurisdiction." *Bazile v. Fin. Sys. of Green Bay, Inc.*, 983 F.3d 274, 279 (7th Cir. 2020); *Hallinan v. Fraternal Order of Police of Chi. Lodge No. 7*, 570 F.3d 811, 820 (7th Cir. 2009). The plaintiff bears the burden of establishing subject matter jurisdiction in response to a Rule 12(b)(1) motion. *Ctr. for Dermatology & Skin Cancer, Ltd. v. Burwell*, 770 F.3d 586, 588–89 (7th Cir. 2014). When deciding a facial challenge to subject matter jurisdiction—that is, when the defendant argues that the plaintiff's jurisdictional allegations are inadequate—"the district court must accept as true all well-pleaded factual allegations, and draw reasonable inferences in favor of the plaintiff." *Ezekiel v. Michel*, 66 F.3d 894, 897 (7th Cir. 1995). By contrast, when considering a factual challenge to subject matter jurisdiction, "[t]he district court may properly look beyond the jurisdictional allegations of the complaint and view whatever evidence has been submitted on the issue to determine whether in fact subject matter jurisdiction exists." *Evers v. Astrue*, 536 F.3d 651, 656–57 (7th Cir. 2008).

A motion to dismiss under Rule 12(b)(2) challenges the Court's jurisdiction over a party. Fed. R. Civ. P. 12(b)(2). As with a Rule 12(b)(1) challenge, "the plaintiff bears the burden of demonstrating the existence of jurisdiction." *Curry v. Revolution Lab'ys, LLC*, 949 F.3d 385, 392 (7th Cir. 2020) (citation omitted). In resolving a Rule 12(b)(2) motion, the Court "accept[s] as true all well-pleaded facts alleged in the complaint," *Felland v. Clifton*, 682 F.3d 665, 672 (7th Cir. 2012), and "read[s] the complaint liberally with every inference drawn in favor of [the] plaintiff." *GCIU-Emp. Ret. Fund v. Goldfarb Corp.*, 565 F.3d 1018, 1020 n.1 (7th Cir. 2009). Although the Court may consider extrinsic evidence in deciding the motion, where—as here—the Court rules on a defendant's Rule 12(b)(2) motion without an evidentiary hearing, "the plaintiff bears only the burden of making a *prima facie* case for personal jurisdiction." *Curry*, 949 F.3d at 393.

ANALYSIS

I. Subject Matter Jurisdiction

The Court begins with Sompo's argument that the complaint should be dismissed for lack of subject matter jurisdiction. *Miller v. Sw. Airlines Co.*, 926 F.3d 898, 902 (7th Cir. 2019) ("Subject-matter jurisdiction is the first issue in any case").

A. Representative Standing

Sompo first argues that the plaintiffs lack standing to sue as Mendelssohn-Bartholdy's heirs. (R. 58 at 20–24.)

Standing is "an essential component of a federal court's subject matter jurisdiction to resolve parties' disputes." *Spuhler v. State Collection Serv., Inc.*, 983 F.3d 282, 284 (7th Cir. 2020).

A litigant's ability to sue as a representative of a decedent's estate is determined by the law of the state in which the Court is located. *Owsley v. Gorbett*, 960 F.3d 969, 970 (7th Cir. 2020); Fed. R. Civ. P. 17(b)(3). "Illinois law has long made clear that" a cause of action that survives the holder's death "must be brought by and in the name of the representative or administrator of the decedent's estate." *Will v. Nw. Univ.*, 378 Ill.App.3d 280, 317 Ill.Dec. 313, 881 N.E.2d 481, 492 (2007) (collecting cases). To file suit as an estate representative or administrator under Illinois law, a litigant must either possess letters of office issued by a court in Illinois or "by a court of competent jurisdiction of any other state, territory, country or the District of Columbia." 755 ILCS 5/22-3.

The plaintiffs have not complied with this requirement in the literal sense. They are not the administrators or representatives of Mendelssohn-Bartholdy's estate, and they lack letters of office issued by a court in Illinois or any other jurisdiction. Nonetheless, they contend that they have standing to sue because their rights as Mendelsohn-Bartholdy's heirs arise under German law. Because German law lacks the concept of an "estate," a legal abstraction central to American and British inheritance law, the plaintiffs argue that they do not need to literally comply with 755 ILCS 5/22-3 to have standing to sue. (FAC ¶ 14.)

To support this contention, the plaintiffs submit a sworn declaration from Ulf Bischof, a German attorney who specializes in art restitution and inheritance law. (R. 67-4 ("Bischof Decl.").) Bischof explains that, under German law, rights and possessory interests vest immediately upon the death of a decedent. (*Id.* ¶ 5(a).) If the decedent has multiple heirs, then, immediately upon death, the heirs take possession of the property jointly and severally as members of what Bischof refers to as a "community of heirs." (*Id.*) The individual co-heirs may individually bring legal actions concerning property that may be subject to the claims of multiple descendants. (*Id.* ¶ 8.) Although the individual heir sues under their own name, they make a demand for performance as to all members of the community. (*Id.* ¶¶ 8–9.)

That is exactly what the plaintiffs did in this case. (FAC ¶¶ 17, 329(a).) Although the plaintiffs filed this action in their personal capacity, the complaint states that they are suing on behalf of all Paul von Mendelssohn-Bartholdy's living heirs. (*Id.*¶ 17.) Bischoff states, under penalty of perjury, that each of the plaintiffs has standing to sue under German law. (Bischof Decl. ¶¶ 10–12.) Sompo has provided no evidence to refute Bischof's interpretation of German law, or to suggest that the individual plaintiffs lack standing. The Court finds that the sworn declaration of Bischof, along with the plaintiffs' allegations provide a legitimate basis for the plaintiffs to pursue their claims, notwithstanding the fact that they have not obtained letters of office under 755 ILCS 5/22-3.

Wilson v. Sundstrand Corporation, No. 99 C 6946, 2002 WL 99745 at *3 (N.D. Ill. Jan. 25, 2002), is instructive.

There, the district court considered whether heirs of a German decedent had standing under Rule 17 to pursue wrongful death and survival actions in Illinois. *Id.* The plaintiffs lacked letters of office, and the district court analyzed whether the plaintiffs' failure to obtain letters under 755 ILCS 5/22-3 barred their claims. The court concluded that it did not, reasoning that:

> There is no basis to believe that the [Illinois] legislature intended to bar the door of the Illinois courts to persons who, under the law of a foreign legal system different from our own, are fully and properly authorized to sue on behalf of a deceased person. If a foreign legal system lacks a procedure for appointment of an administrator of an estate but has some other mechanism which accomplishes these purposes, we see no basis to require more and do not believe that the Illinois courts would require more if faced with the issue.

Id. Like the plaintiffs in this case, the plaintiffs in *Wilson* submitted documentary proof of their status as heirs and the testimony of a German law expert who verified that the plaintiffs had authority to bring suit. *Id.* at *1. The court held that the plaintiffs had standing since they had presented evidence that they had complied with the relevant procedures under German law. *Id.* at *4.

Here, too, the plaintiffs have presented evidence that they complied with prerequisites for bringing suit. Bischoff testified that (1) Germany lacks a procedure for

appointment of an estate administrator comparable to Illinois, (2) that an individual suit on behalf of a community of heirs would fulfill the same purpose as an action brought by an appointed representative, and that (3) the plaintiffs have standing to bring such a claim under German law. (R. 67-4.) This is sufficient to establish, at least for present purposes, that the plaintiffs have standing to sue as Mendelssohn-Bartholdy's heirs. Indeed, in another case involving the same named plaintiffs, the U.S. District Court for the Southern District of New York reached a similar result under New York law, accepting the plaintiffs' characterization of German law and holding that "the [c]laimants' failure to be appointed representatives of the relevant estates" as required by a New York statute was not "a bar to bringing their conversion and replevin claims." *Schoeps v. Museum of Mod. Art*, 594 F. Supp. 2d 461, 467 (S.D.N.Y. 2009).

Sompo attempts to distinguish these cases by pointing out that the plaintiffs are seeking the right to sue in their individual capacities (rather than in their representative capacities). This is a distinction without a difference, however, since Bischof's declaration indicates that there is no such thing as a "representative capacity" suit under German law in this context. As a matter of German law, the fact that the plaintiffs are suing "in their individual capacities" is not inconsistent with the notion that they are bringing the action on behalf of all Mendelssohn-Bartholdy's heirs.

Sompo also cites *Schoeps v. Andrew Lloyd Webber Art Foundation*, 66 A.D.3d 137, 884 N.Y.S.2d 396 (N.Y. 2009),

a New York appellate court decision holding that—under a New York analog of Illinois' "right to sue" statute—the plaintiffs lacked standing because they had not obtained letters of office naming them as estate representatives. (R. 58 at 23.) *Andrew Lloyd Webber* is distinguishable from the case at bar, however, since the plaintiffs in that case failed to submit a verified affidavit or documentary proof to substantiate thei-*r claims regarding German law. *See* 66 A.D.3d at 142, 884 N.Y.S.2d 396. The court held that "[a]t a minimum, the absence of the affirmation of an expert in German law, opining as to the applicability of German law to plaintiff's standing to bring this lawsuit without being appointed as a personal representative, renders the record insufficient." *Id.* Here, Bischof's declaration details the operation of German inheritance law and the concept of a community of heirs.

Because the weight of authority suggests that the plaintiffs have representative standing to sue as Mendelssohn-Bartholdy's heirs, notwithstanding the fact they have not obtained letters of administration, the Court denies Sompo's motion to dismiss the complaint due to lack of standing.

B. Federal Common Law Claims

Sompo next argues that the Court lacks subject matter jurisdiction over the federal causes of actions alleged in the complaint. (R. 58 at 24–28.) Specifically, it asks the Court to dismiss the plaintiffs' restitution and unjust enrichment claims premised on "federal common law" and on the Court's "plenary equitable authority" under Article III, Section 2 of the U.S. Constitution.

Appendix D

As an initial matter, the plaintiffs' appeal to the Court's "plenary equitable authority" under Article III as a separate basis for jurisdiction is a nonstarter. "Article III does not confer on litigants an absolute right to the plenary consideration of every nature of claim by an Article III court." *Commodity Futures Trading Comm'n v. Schor*, 478 U.S. 833, 848, 106 S.Ct. 3245, 92 L.Ed.2d 675 (1986). Article III, Section 2 provides, in pertinent part, that "[t]he judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made . . . ." In other words, while the Constitution empowers federal courts to hear suits in equity, this power is limited to "cases and controversies . . . arising under federal law or within the diversity jurisdiction." *Gubala v. Time Warner Cable, Inc.*, 846 F.3d 909, 911 (7th Cir. 2017). Whether the Court can hear the plaintiffs' equitable causes of action depends on whether such claims exist under federal common law.

"[T]here is no federal general common law." *Rodriguez v. Fed. Deposit Ins. Corp.*, 589 U.S. 132, 140 S. Ct. 713, 717, 206 L.Ed.2d 62 (2020) (citing *Erie R. Co. v. Tompkins*, 304 U.S. 64, 78, 58 S.Ct. 817, 82 L.Ed. 1188 (1938)). "Instead, only limited areas exist in which federal judges may appropriately craft the rule of decision." *Id.* (citation omitted); 32 Am. Jur. 2d Federal Courts § 356 ("The reluctance to create common law is a core feature of federal court jurisprudence."). These areas are "few and restricted" and must involve "extraordinary" circumstances. *O'Melveny & Myers v. FDIC*, 512 U.S. 79, 87, 89, 114 S.Ct. 2048, 129 L.Ed.2d 67 (1994). In general, a court may only recognize a federal common law claim

if (1) a federal rule of decision is "necessary to protect uniquely federal interests" or (2) if "Congress has given the courts the power to develop substantive law." *United States v. Park*, 389 F. Supp. 3d 561, 579 (N.D. Ill. 2019) (quoting *Texas Indus., Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 640, 101 S.Ct. 2061, 68 L.Ed.2d 500 (1981)).

The Court first considers whether the creation of equitable remedies is necessary to protect "uniquely federal interests." *Texas Indus.*, 451 U.S. at 640, 101 S.Ct. 2061. Examples of such interests include interstate or international disputes between states or foreign nations or the admiralty. *Id.* at 641, 101 S.Ct. 2061 (collecting cases).

The plaintiffs liken this lawsuit to an international dispute since *Sunflowers* has moved across at least six different nations and three continents, and because of the painting's "Nazi taint." (*See* R. 67 at 21 ("[T]he restitution of Nazi-confiscated artworks involves foreign affairs and affects international relations."); *see also id.* at 38 n.93.) Despite its international character, however, this is a dispute between private parties. None of the parties are "states or foreign nations." *Texas Indus.*, 451 U.S. at 641, 101 S.Ct. 2061. This fact renders most of the cases that the plaintiff cites distinguishable. *Republic of Philippines v. Marcos*, 806 F.2d 344, 348 (2d Cir. 1986), concerned "an action brought by a foreign government against its former head of state," *Provincial Government of Marinduque v. Placer Dome, Inc.*, 582 F.3d 1083 (9th Cir. 2009), involved an action brought by foreign provincial government, and *Mashayekhi v. Iran*, 515 F. Supp. 41 (D.D.C. 1981), was an action for damages against a foreign government.

Appendix D

Ungaro-Benages v. Dresdner Bank AG, is the only case that the plaintiffs cite in which a court applied federal common law to a dispute between two private actors. 379 F.3d 1227 (11th Cir. 2004). There, a descendent of a Jewish heir to a German corporation sued German banks that had stolen the heir's stock pursuant to Nazi divestment policies. *Id.* at 1229. The Eleventh Circuit held that federal common law applied because the case implicated the uniquely federal area of foreign relations. *Id.* at 1232–33. Crucially, however, the Eleventh Circuit identified an executive agreement between the United States and Germany that provided "the exclusive remedy and forum for the resolution of all claims that have been or may be asserted against German companies arising from the National Socialist era and World War II." *Id.* at 1234. This agreement preempted contrary state law and "firmly establish[ed] that issues related to litigation against German corporations from the National Socialist era are governed by federal law . . . ." *Id.* at 1234–35 (citing *Am. Ins. Ass'n v. Garamendi*, 539 U.S. 396, 123 S.Ct. 2374, 156 L.Ed.2d 376 (2003)).

The plaintiffs have not identified a comparable executive agreement that mandates the application of federal common law as opposed to state law in this case. They cite the Terezin Declaration, a "legally non-binding" document promulgated on June 30, 2009, at the Prague Holocaust Era Assets Conference. Because the Terezin Declaration has no legal effect, it is distinguishable from the agreement at issue in *Ungaro-Benages*.

Nor has Congress given federal courts the power to develop substantive law in this area. The plaintiffs cite the

HEAR Act as conferring such authority. (FAC ¶¶ 232–33; R. 68 at 21–22.) But, unlike the treaty at issue in *Ungaro-Benages*, the HEAR Act does not preempt state law property or tort claims. To the contrary, the HEAR Act implicitly sanctions the application of state law to claims concerning stolen Nazi art by extending state law statutes of limitations. Nor does the HEAR Act include a remedial scheme for the recovery of stolen property. The Act states that "[n]othing in this Act shall be construed to create a civil claim or cause of action." Pub. L. No. 114-308, § 5(f).

Zuckerman v. Metropolitan Museum of Art, 928 F.3d 186, 195 (2d. Cir. 2019), is persuasive as to why the HEAR Act does not create a federal common law cause of action. In considering an action to recover expropriated art, the Second Circuit clarified that the HEAR Act fulfilled the limited purpose of abrogating state statute of limitations periods and rejected an attempt to create a federal common law cause of action. *Id.* at 195 n.9 The plaintiffs argue that the Second Circuit's ruling in *Zuckerman* is merely persuasive and does not "negate the ability" of this court to recognize a federal common law cause of action on its own. (R. 67 at 22.) But the fact that a course of action lies within this Court's authority does not make it advisable. In the absence of any federal court recognizing a federal common law cause of action under the HEAR Act, this Court will not be the first to do so.

Similarly, the plaintiffs cite the Holocaust Victims Redress Act, Pub. L. No. 105-158, 112 Stat 15 (1998). But federal courts have interpreted this statute as not creating a federal common law cause of action to recover art stolen

by the Nazis. *See, e.g.*, *Dunbar v. Seger-Thomschitz*, 615 F.3d 574, 576 (5th Cir. 2010); *Orkin v. Taylor*, 487 F.3d 734, 739 (9th Cir. 2007). In sum, the plaintiffs have failed to establish that applying Illinois state law to their claims would impose a "significant conflict with an identifiable federal policy or interest." *Id.* Accordingly, the Court dismisses Counts IX, X, XI, and XII due to lack of subject-matter jurisdiction.[3]

II. Personal Jurisdiction

The Court next considers whether it may exercise personal jurisdiction over Sompo. Where—as here—no federal statute authorizes service of process, personal

3. This dismissal raises the possibility that the Court lacks subject matter jurisdiction over the plaintiffs' remaining state law claims. Although Sompo does not raise this issue, the Court has an independent obligation to assess subject matter jurisdiction at any stage of the proceedings. *Foster v. Hill*, 497 F.3d 695, 696–697 (7th Cir. 2007). Under *Gunn v. Minton*, federal question jurisdiction extends to state law causes of action in circumstances where a "federal law issue is: (1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of resolution in federal court without disrupting the federal-state balance approved by Congress." 568 U.S. 251, 258, 133 S.Ct. 1059, 185 L.Ed.2d 72 (2013). District courts have held that the extension of state law statute of limitations periods pursuant to the HEAR Act raises a federal question and provides a basis for federal question jurisdiction under *Gunn*. *See, e.g.*, *Holtzman as Tr. of Elizabeth McManus Holtzman Irrevocable Tr. v. Philadelphia Museum of Art*, No. 22 C 122, 2022 WL 2651851, at *8 (E.D. Pa. July 7, 2022). This Court agrees with the analysis in *Holtzman* and concludes that the application of the HEAR Act supplies a basis for federal question jurisdiction over the plaintiffs' remaining state law claims.

jurisdiction is governed by the law of the forum state and must comply with both statutory and constitutional requirements. *Tamburo v. Dworkin*, 601 F.3d 693, 700 (7th Cir. 2010). Because Illinois' long-arm statute allows for personal jurisdiction to the full extent authorized by the Illinois and United States Constitutions, only the Constitutional inquiry is necessary. *See id.* (citing ILCS § 5/2–209(c)); *KM Enters., Inc. v. Glob. Traffic Techs., Inc.*, 725 F.3d 718, 732 (7th Cir. 2013).

Under the Due Process Clause of the Fourteenth Amendment, a district court may exercise personal jurisdiction over an out-of-state defendant only if the defendant has "certain minimum contacts with the state such that maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S.Ct. 154, 90 L.Ed. 95 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463, 61 S.Ct. 339, 85 L.Ed. 278 (1940)). Minimum contacts exist where "the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980); *Brook v. McCormley*, 873 F.3d 549, 552 (7th Cir. 2017).

Personal jurisdiction comes in two flavors—general and specific. *Daimler AG v. Bauman*, 571 U.S. 117, 126–28, 134 S.Ct. 746, 187 L.Ed.2d 624 (2014). A court may exercise general personal jurisdiction only when a defendant is "essentially at home" in the forum state. *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 592 U.S.

351, 358, 141 S.Ct. 1017, 209 L.Ed.2d 225 (2021). Specific personal jurisdiction, by contrast, covers "a narrower class of claims" based on the defendant's "purposeful availment" of the forum state. *Id.*; *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985). There is no dispute that the Court cannot exercise general personal jurisdiction over Sompo; the only question is whether the exercise of specific personal jurisdiction is proper.

A. Minimum Contacts

To establish that the Court may exercise specific personal jurisdiction over Sompo, the plaintiffs must satisfy two requirements. First, they must plausibly allege that Sompo took "some act by which it purposefully avail[ed] itself of the privilege of conducting activities within" Illinois. *Ford Motor Co.*, 592 U.S. at 359–60, 141 S.Ct. 1017 (quoting *Hanson v. Denckla*, 357 U.S. 235, 253, 78 S.Ct. 1228, 2 L.Ed.2d 1283 (1958)). Sompo's contacts must be voluntary and not "random, isolated, or fortuitous." *Id.* (quoting *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774, 104 S.Ct. 1473, 79 L.Ed.2d 790 (1984)). Second, the plaintiffs' claims "must arise out of or relate to" Sompo's contacts with Illinois. *Id.* at 359, 141 S.Ct. 1017 (citation omitted).

1. Whether Minimum Contacts May be Imputed Among the Sompo Entities

Before assessing whether the plaintiffs have alleged the requisite minimum contacts, the Court addresses

the threshold issue of whether the contacts of the various Sompo entities may be imputed to one another.

As a general matter, "[e]ach defendant's contacts with the forum State must be assessed individually." *AFI Holdings of Ill., Inc. v. Nat'l Broad. Co.*, 239 F. Supp. 3d 1097, 1101 (N.D. Ill. 2017) (quoting *Calder v. Jones*, 465 U.S. 783, 790, 104 S.Ct. 1482, 79 L.Ed.2d 804 (1984)); *see also Keeton*, 465 U.S. at 781, 104 S.Ct. 1473 ("[J]urisdiction over a parent corporation [does not] automatically establish jurisdiction over a wholly owned subsidiary."); *Purdue Rsch. Found. v. Sanofi-Synthelabo, S.A.*, 338 F.3d 773, 788 (7th Cir. 2003); *Central States, Se. & Sw. Areas Pension Fund v. Reimer Express World Corp.*, 230 F.3d 934, 944 (7th Cir. 2000). Only in the "narrow instances where a parent utilizes its subsidiary in such a way that . . . the parent has greater control over the subsidiary than normally associated with common ownership and directorship or where the subsidiary is merely an empty shell" are the "contacts of a subsidiary [ ] aggregated with the contacts of the parent." *Purdue Rsch. Found.*, 338 F.3d at 788 n.17 (internal quotation marks and alterations omitted).

The plaintiffs' allegations fall short of demonstrating that the Sompo entities' contacts may be imputed to one another for personal jurisdiction purposes. The complaint does not allege that the Sompo entities have common ownership or directorship or failed to observe corporate formalities. Nor does it describe Sompo's corporate structure in detail. The complaint alleges, in conclusory fashion, that Sompo Holdings, Inc. "exercises dominion and exclusive control" over the other entities. But the

Court need not credit these boilerplate allegations. *See Mohammed v. Uber Techs., Inc.*, 237 F. Supp. 3d 719, 735 (N.D. Ill. 2017). The only allegations regarding corporate form that the complaint sets forth in any detail are that the defendants "promote an international corporate identity," that "all of the Sompo entities are united in identity, function, and purpose internationally as 'One Sompo'" and that the defendants have "a unity of interest and ownership that causes the separate identities of these entities to no longer exist." (FAC ¶ 89(a).)

These allegations are an insufficient basis for disregarding the corporate form.[4] *See Gruca v. Alpha Therapeutic Corp.*, 19 F. Supp. 2d 862, 867–68 (N.D. Ill. 1998) (rejecting veil piercing allegations in the context of a motion to dismiss for lack of personal jurisdiction over

4. Federal courts sitting in Illinois apply "the law of the state of incorporation to veil piercing claims." *Wachovia Sec., LLC v. Banco Panamericano, Inc.*, 674 F.3d 743, 751 (7th Cir. 2012). The defendants are incorporated in Japan and Bermuda, and the plaintiffs identify no authority regarding veil-piercing and alter-ego under Japanese and Bermudan law. The Court need not perform legal research on their behalf. *White v. Richert*, 15 C 8185, 2019 WL 4062539, at *9 (N.D. Ill. Aug. 28, 2019) (citing *Pelfresne v. Vill. of Williams Bay*, 917 F.2d 1017, 1023 (7th Cir. 1990)). That said, the Court notes that, under either jurisdiction's law, veil piercing is permitted only in "extraordinary circumstances." *In re Arb. between Promotora de Navegacion, S.A.*, 131 F. Supp. 2d 412, 422 (S.D.N.Y. 2000) (Bermuda law); *Semiconductor Energy Laby. Co. v. Samsung Elecs. Am., Inc.*, 116 F.3d 1497 (Fed. Cir. 1997) (Japanese law requires a plaintiff to plead facts showing that "a juridical entity is . . . abusively used in order to avert application of law.").

a Japanese parent company since ambiguous references to "*[o]ur* key overseas operation," "*our* international marketing efforts" and "*our* marketing position" were consistent with a subsidiary's existence as a separate entity) (emphases in original); *Medco Rsch., Inc. v. Fujisawa Pharm. Co.*, No. 93 C 2705, 1994 WL 87453, at *4 (N.D. Ill. Mar. 16, 1994) (similar); *see also Sompo Japan Nipponkoa Ins., Inc. v. CSX Transp., Inc.*, No. 19 C 1154, 2020 WL 7074558, at *7 (M.D. Fla. Dec. 3, 2020) ("The mere fact that [two entities] share a principal place of business, a website, and some overlap of governing officers is insufficient to pierce the corporate veil.")

The plaintiffs also allege that Sompo's corporate form should be disregarded because Sompo has used it to "circumvent the provisions of a statute." (FAC ¶ 59) (*quoting Ill. Bell Tel. Co., Inc. v. Glob. NAPs Ill., Inc.*, 551 F.3d 587, 591 (7th Cir. 2008)). But the complaint does not explain how Sompo's corporate form—as opposed to its conduct—undermines the policies of the HEAR Act (or any other federal statute). Similarly, the plaintiffs contend that Sompo's corporate form should be disregarded based on fraud. (R. 67 at 26.) They point to a communication between Sompo and the AIC prior to the 2001 exhibition in Chicago in which a Sompo employee stated that "we cannot change the ownership" of *Sunflowers* because a "Nazi[ ] confiscation problem may arise in America and in Holland." (R. 39-1.) Based on this communication, the plaintiffs allege that Sompo and the AIC falsified or fraudulently concealed information in an application for immunity from judicial seizure that was approved by the State Department prior to the exhibition. (FAC ¶¶ 6, 33, 72, 106(b), 250, 253.)

There are a couple of problems with this theory. First, the Federal Rules require fraud or mistake to be pleaded with particularity. Fed. R. Civ. P. 9(b). The plaintiffs' allegations demonstrate, at best, that Sompo was aware of the potential "Nazi taint" of *Sunflowers* before it obtained an order of immunity from judicial seizure in advance of the 2001 exhibition. The complaint does not identify any false or misleading statement that Sompo made to the State Department in connection with this application, or any information that was concealed. Instead, the plaintiffs' allegations of fraud are made "upon information belief," which, as a general matter, is insufficient to satisfy Rule 9(b). *Bankers Trust Co. v. Old Republic Ins. Co.*, 959 F.2d 677, 683 (7th Cir. 1992). More fundamentally, even accepting the plaintiffs' allegations as true, the fact that Sompo may have concealed aspects of *Sunflowers*' provenance from authorities does not demonstrate that its *corporate structure* should be disregarded. *Cf. In re Clearview AI, Inc., Consumer Priv. Litig.*, 585 F. Supp. 3d 1111, 1124 (N.D. Ill. 2022) (identifying requirement that "corporate structure *cause* fraud or similar injustice") (emphasis added). Simply put, there is no connection between this alleged fraud and Sompo's corporate form.[5]

5. The plaintiffs also allege that Sompo Holdings, Inc. misrepresented on its website that it conducted "an extensive enterprise-wide human rights due diligence investigation." (FAC ¶ 39.) These allegations are similarly insufficient. The plaintiffs do not identify any false statement on the website, and they allege no facts indicating that Sompo did not undertake the human rights investigation that it claims it did. At any rate, whether Sompo completed an internal human rights investigation is not relevant to whether its corporate form should be disregarded for personal jurisdiction purposes.

Nor have the plaintiffs adequately alleged that Sompo's corporate form should be disregarded based on an agency theory. A recent decision from this District, *Theta IP, LLC v. Motorola Mobility, LLC*, No. 22 C 3441, 2024 WL 1283706, at *1–2 (N.D. Ill. Mar. 25, 2024), is instructive on this point. In *Theta IP*, the plaintiff filed suit against Motorola Mobility LLC, its affiliate, Lenovo (United States) Inc., and their Chinese parent company. *Id.* The plaintiffs alleged that the Court could exercise personal jurisdiction over the parent company based on its subsidiary's contacts because the corporations shared overlapping executives, were parties to the same insurance contracts, and because statements in the corporation's reporting indicated the parent company had the ability to "direct the activity" of its subsidiaries. *Id.* at *4–5. The district court found that these allegations were insufficient to establish personal jurisdiction over the parent company, pointing out the absence of allegations or evidence that the companies maintained separate books and records, or that the parent company participated in "the staffing, marketing, sales, and pricing decisions of its subsidiaries." *Id.* at *5.

The plaintiffs' allegations in this case are even more sparse than those at issue in *Theta IP*. Apart from statements identifying the company as "One Sompo," and a company-wide branding strategy, the plaintiffs do not point to any facts indicating that the Sompo entities are essentially integrated. And the defendants submitted unrebutted declarations indicating that, with respect to the conduct at issue in this case, they are not involved in the activities of their affiliates'. (*See* R. 58-1; R. 58-2; R.

58-3; R. 58-4); *see, e.g.*, *United Airlines, Inc. v. Zaman*, 152 F. Supp. 3d 1041, 1045 (N.D. Ill. Apr. 30, 2015) ("When Defendant challenges by declaration a fact alleged in the Complaint, Plaintiff has an obligation to go beyond the pleadings and submit affirmative evidence supporting the exercise of jurisdiction."). Accordingly, the plaintiffs may not impute the contacts of the Sompo entities to one another for personal jurisdiction purposes.

2. Purposeful Availment Related to the Plaintiffs' Claims

The Court next considers whether the plaintiffs have established a *prima facie* case of personal jurisdiction based on allegations that each of the Sompo defendants purposefully availed themselves of Illinois. Broadly speaking, the plaintiffs allege that the Sompo entities directed their conduct toward Illinois by (1) selling insurance in the state, (2) hosting websites and disseminating advertisements, (2) displaying an image of *Sunflowers* on Sompo Holdings, Inc.'s website, and (3) loaning *Sunflowers* to the AIC for the Van Gogh exhibition in 2001. Because these theories are "dissimilar in terms of geography, time, [and] substance," the Court "cannot simply aggregate" them and instead addresses them separately. *See uBID, Inc. v. GoDaddy Grp., Inc.*, 623 F.3d 421, 429 (7th Cir. 2010).

a. Sompo's Sale of Insurance in Illinois

The plaintiffs first argue that Sompo has purposely availed itself of Illinois because it sells insurance in the

state. The problem with this theory is that it does not apply to any of the Sompo entities named in the complaint. (R. 58-1 ¶ 5; R. 58-2 ¶ 6; R. 58-3; R. 58-4 ¶ 7.) Declarations submitted by Sompo indicate that only one Sompo affiliate sells insurance in Illinois and that entity is an unnamed, indirect subsidiary of Sompo International Holdings Ltd. (R. 58-3 ¶¶ 7–8.)

Even if this nonparty subsidiary's contacts could be imputed to Sompo International Holdings Ltd., or to Sompo as a whole, contacts related to the sale of insurance would not be suit-related. *Bristol-Myers Squibb Co. v. Sup. Ct. of Cal., San Francisco Cnty.,* 582 U.S. 255, 256, 137 S.Ct. 1773, 198 L.Ed.2d 395 (2017) ("What is needed is a connection between the forum and the specific claims at issue."). In *Ford Motor Company*, the Supreme Court clarified that while the defendants' activities in the forum state do not need to *cause* the plaintiff's claims to give rise to specific personal jurisdiction, they must "relate to" those claims in a substantial way. 592 U.S. at 362, 141 S.Ct. 1017. Despite the apparent breadth of this phrase, the Supreme Court emphasized that "related to" "does not mean that anything goes." *Id.* Rather, the phrase "incorporates real limits, as it must to adequately protect defendants foreign to a forum." *Id.*

Accepting the plaintiffs' theory of specific personal jurisdiction based on a single Sompo subsidiary's sale of insurance in Illinois would exceed those limits. *See In re Abbott Lab'ys, et al., Preterm Infant Nutrition Prod. Liab. Litig.*, No. 22 C 2011, 2023 WL 8527415, at *9 (N.D. Ill. Dec. 8, 2023) (Pallmeyer, J.) (identifying the

"relationship between the defendant's activities and the plaintiff's claims" as the relevant inquiry for the "related to" analysis). Unlike the plaintiffs in *Ford Motor Company*, who were residents of the forum state and had purchased automobiles from the defendant, none of the plaintiffs in this case are residents of Illinois or purchased insurance from Sompo. Their claims relate to Sompo's acquisition of *Sunflowers*, which occurred in London in 1987. The plaintiffs do not challenge Sompo's ability to sell insurance in Illinois, and their alleged injuries are unrelated to the sale of insurance. In sum, the Court concludes that a single nonparty subsidiary's sale of insurance in Illinois is an insufficient basis for exercising specific personal jurisdiction over Sompo as to the plaintiffs' claims.

b. Websites and Digital Advertising

The plaintiffs also allege that Sompo's use of websites and online advertisements provides a basis for specific personal jurisdiction in Illinois. (FAC ¶¶ 53, 84.) They cite Sompo Holdings Inc. and Sompo International Holdings Ltd.'s interactive websites, (*Id.* ¶¶ 81–84), which the plaintiffs allege that consumers in Illinois "would consult" in the "exercise of reasonable care and due diligence" prior to purchasing insurance. (*Id.* ¶ 81.) Similarly, the plaintiffs point to an October 2022 advertisement in the *Wall Street Journal* titled "Accelerating Growth in a Time of Great Change." (FAC ¶¶ 39, 84; R. 39-9.) The advertisement consists of a Q&A in which Sompo Holdings Inc.'s Chief Operating Officer describing the company's financial situation. (R. 39-9.)

"As a general rule, 'national advertisements are insufficient to subject a defendant to jurisdiction in Illinois.'" *Eco Pro Painting, LLC v. Sherwin-Williams Co.*, 807 F. Supp. 2d 732, 737 (N.D. Ill. 2011) (quoting *Hot Wax, Inc. v. Stone Soap, Co.*, No. 97 C 6878, 1999 WL 183776, at *4 (N.D. Ill. Mar. 25, 1999)); *Sunbelt Corp. v. Noble, Denton & Assocs., Inc.*, 5 F.3d 28, 33 n. 10 (3d Cir. 1993). Similarly, "[h]aving an 'interactive website' . . . should not open a defendant up to personal jurisdiction in every spot on the planet where that interactive website is accessible." *Advanced Tactical Ordnance Sys., LLC v. Real Action Paintball, Inc.*, 751 F.3d 796, 803 (7th Cir. 2014). In either case, "[i]f the defendant . . . does not target[ ] the forum state, then the defendant may not be haled into court in that state without offending the Constitution." *be2 LLC v. Ivanov*, 642 F.3d 555, 559 (7th Cir. 2011).

Because there are no allegations that Sompo's websites target consumers in Illinois specifically, the fact that Sompo operates websites that are accessible in the state is not sufficient to establish personal jurisdiction. *Id.* at 558–559 (collecting cases). The same is true of the *Wall Street Journal* advertisement; there is no allegation or evidence that Sompo "deliberately directed" this advertisement to consumers in Illinois. *Eco Pro*, 807 F. Supp. 2d at 737.

The plaintiffs rely on *Curry v. Revolution Labs., LLC*, and *uBID, Inc. v. GoDaddy Grp., Inc.* for the proposition that online contacts may be sufficient to establish specific personal jurisdiction when the company employs a "national business model." (*See* R. 67 at 38–39.) But

the exercise of personal jurisdiction in *Curry* and *uBID* was not based *merely* on the fact that the defendants maintained websites that were accessible in the forum states. Rather, the plaintiffs also alleged substantial litigation-related conduct in those states. For example, in *Curry* the plaintiffs alleged that the defendant—in addition to advertising online—listed Illinois as a "ship to" option on its website and sold its product to 767 Illinois residents. 949 F.3d at 390–91. Similarly, in *uBID* the plaintiff alleged that the defendant had completed "hundreds of thousands of sales in Illinois." 623 F.3d at 428.

As already discussed, no Sompo entity named as a defendant in this suit sells insurance in Illinois. Moreover, in *Curry* and *uBID*, there was a closer connection between the sale of the products at issue and the plaintiffs' claims. The plaintiffs were residents of Illinois and the sales that gave rise to the minimum contacts caused the plaintiffs' injuries. In this case, by contrast, the plaintiffs are not residents of Illinois and they do not allege that they were injured by a Sompo affiliate's sale of insurance in Illinois. In short, the plaintiffs' allegations concerning advertisements and websites are insufficient to establish specific personal jurisdiction.

c. Display of *Sunflowers* on Sompo Holdings, Inc.'s Website

Relatedly, the plaintiffs allege that Sompo Holdings, Inc.'s display of *Sunflowers* on its website forms a basis for specific personal jurisdiction. A scroll-through banner on

the website displays an image of the painting, along with a statement that reads: "True Feeling and an Enriched Heart for People and Society through Arts and Culture." (FAC ¶ 39.)

The plaintiffs contend that this display of *Sunflowers* is central to Sompo's overall brand identity and marketing strategy. (*See id.* ¶¶ 82–83.) They submit a declaration authored by Katie Quinn Spangenberg, an Assistant Professor of marketing at Seattle University in Seattle, Washington. (*See* R. 62-4.) Spangenberg testifies that the Sompo entities "are employing a sophisticated branding strategy known as 'archetypal branding' to capture the distinctive character attributes of Sunflowers and its iconic creative artist Vincent van Gogh, and to transfer and invest these same qualities in Sompo Holdings and the other Sompo entities." (*Id.* ¶ 9.)

A skeptical reader might think it implausible that a Japanese insurance company is using a nineteenth century European painting to subliminally target American consumers.[6] As it pertains to personal jurisdiction, however, the fundamental issue with the plaintiffs' branding theory is that using archetypes to market

6. The plaintiffs' archetypal branding theory "borrows from the research and theories of the preeminent 20th century psychologist Carl Jung." (R. 62-4. ¶ 10) Jung's assumptions have been criticized by psychologists, *see, e.g.*, Andrew Neher, *Jung's Theory of Archetypes: A Critique*, 36 J. Hum. Psych. 2, 61–91 (1996) and federal courts have resisted "projection of Jungian analysis" into the realm of civil litigation. *In re Integrated Res. Real Est. Ltd. P'ships Sec. Litig.*, 850 F. Supp. 1105, 1115 (S.D.N.Y. 1993).

products to consumers is conceptually no different than using nationwide advertisement or websites to do so. The plaintiffs' allegations indicate that, like Sompo's other websites and online advertisements, the website displaying the painting is "accessible nationally." (FAC ¶ 33, 40, 97.) Even accepting the notion that Sompo is using archetypes created by *Sunflowers* to influence potential customers, there is no evidence that it is doing so in Illinois specifically.

Moreover, as Sompo points out, the plaintiffs do not contest that the image of *Sunflowers* displayed on Sompo Holdings, Inc.'s website is in the public domain. The Copyright Act distinguishes between the ownership of a copyright or exclusive rights under a work and ownership of a material object embodying the work. 17 U.S.C. § 202; *Bridgeman Art Library, Ltd. v. Corel Corp.*, 36 F. Supp. 2d 191, 195 (S.D.N.Y. 1999) ("exact photographic copies of public domain works of art are not copyrightable under [U.S.] law because they are not original"). The fact that the Sompo entities are allegedly displaying the *image* of *Sunflowers* does not supply a basis for any suit-related conduct. In sum, Sompo Holdings, Inc.'s display of *Sunflowers* on its website is insufficient to establish specific personal jurisdiction.

d. Sompo's Display of *Sunflowers* at the Art Institute of Chicago in 2001–2002

That leaves the display of *Sunflowers* at the AIC in Chicago from September 2001 to January 2002. Two cases cited by Sompo illustrate why the AIC's less than

four-month exhibition of *Sunflowers* over twenty years ago is insufficient to establish personal jurisdiction in Illinois: *Barzilai v. Museum*, No. 153086/2022, 2022 WL 16856131 (N.Y. Sup. Ct. Nov. 10, 2022), and *Graff v. Leslie Hindman Auctioneers, Inc.*, 342 F. Supp. 3d 819 (N.D. Ill. 2018), *vacated on other grounds*, 2019 WL 13196397 (N.D. Ill. Feb. 12, 2019).

In *Barzilai*, the plaintiffs sought to recover a 14th-century Haggadah that was stolen after the original owner was arrested and murdered by the Nazis. 2022 WL 16856131, at *1–2. In the aftermath of World War II, the text was transferred to the Israel Museum in Jerusalem. *Id.* The heirs of the painting filed suit to recover the painting in New York. *Id.* at *2–3. Notwithstanding the fact that the Israeli museum was not a domiciliary of New York, plaintiffs argued that New York courts could exercise personal jurisdiction over it based on, among other things, the fact that the book had been loaned to the New York Public Library for a little over five months. *Id.* The Supreme Court of New York held that the plaintiffs had failed to satisfy the requirements of New York's long arm statute and due process. *Id.* at *4–5. The court stated that because the plaintiffs' alleged claims for replevin and conversion "arose out of a theft and subsequent sale far away from New York," they were not substantially related to whatever New York-based business dealings the Israel Museum may have engaged in decades later. *Id.* at *3, 6–7.

Similarly, in *Graff*, another court in this District addressed whether it could exercise specific personal jurisdiction over a Phoenix, Arizona pawn broker that

took possession of paintings that had been stolen by the plaintiff's wife in Texas. 342 F. Supp. 3d at 821–22. The broker later offered the paintings for sale at an auction in Illinois. *Id.* The court rejected the plaintiff's theory that the Illinois auction was a sufficient basis for exercising personal jurisdiction over the defendant. *Id.* at 826–27. Because "the conversion at issue occurred prior to the auction that took place in Illinois," the court held "any connections between [the defendant] and [the plaintiff's wife] related to the subsequent auction of the paintings do not aid [the plaintiff] in establishing personal jurisdiction . . . ." *Id.* at 826.

As in *Barzilai* and *Graff*, Sompo's allegedly unlawful acquisition of *Sunflowers* did not take place in Illinois, but in London, over a decade prior to the exhibition in Illinois. As in *Barzilai*, there are no allegations that Sompo attempted to sell or directly monetize the painting while it was on display in Chicago.[7] And even if it had, *Graff* provides that this would not necessarily provide a sufficient connection to Sompo's allegedly unlawful acquisition of the painting.

The plaintiffs' attempt to distinguish *Barzilai* on the grounds that the case involved a private theft rather than Nazi-induced duress and was decided under New York's long arm statute rather than the Due Process Clause. (R. 67 at 42 n.100.) But *BarzIlai* also involved claims under

7. The only benefit that Sompo allegedly received from allowing the AIC to exhibit *Sunflowers* was "a reciprocal promise" from the AIC and the Van Gogh Museum to lend Van Gogh paintings to an exhibition in Tokyo the following year. (FAC ¶ 70.)

the HEAR Act, and the plaintiffs do not explain how the presence or absence of Nazi duress is relevant to the lawsuit's connection to Illinois. Moreover, although the limitations of New York's long arm statute and the Due Process Clause are not coextensive, the *Barzilai* court found that, in addition to failing to satisfy the statutory prerequisites, the exercise of jurisdiction would not satisfy the "minimum contacts" requirement of due process.

The plaintiffs also attempt to distinguish *Graff*, arguing that the case relied on a since-abandoned requirement that a plaintiff's injuries must be caused in the forum state. (R. 67 at 42 n.100.) According to the plaintiffs, *Ford Motor Company* heralded a change in the law of specific jurisdiction and Sompo is therefore stuck in a "jurisdictional time warp." (*Id.*) But the district court's reasoning in *Graff* did not rely solely on the location of the plaintiff's alleged injury, but also on the defendant's contacts with Illinois as a whole. 342 F. Supp. 3d at 824–25. Nor does *Ford Motor Company* undermine the district court's reasoning. In *Ford Motor Company* the Supreme Court emphasized that it was synthesizing, rather than overruling, previous decisions. *See* 592 U.S. at 362, 141 S.Ct. 1017. Rather than lowering the constitutional limits for specific personal jurisdiction, the Court underscored that "real limits" remain, and that plaintiffs still must establish a significant relationship between the forum and the claims at issue. *Id.* The plaintiffs have failed to do so here. Accordingly, the Court rejects the plaintiffs' argument that the public display of *Sunflowers* at the AIC constitutes "purposeful availment" of Illinois.

In conclusion, the Court finds that the defendants lack the requisite minimum contacts with Illinois to face a lawsuit in this jurisdiction. The Court may not exercise specific jurisdiction over Sompo in Illinois.

B. Traditional Notions of Fair Play and Substantial Justice

Even if the plaintiffs were able to establish minimum contacts in Illinois, exercising personal jurisdiction would not comport with notions of fair play and substantial justice. *Int'l Shoe*, 326 U.S. at 316, 66 S.Ct. 154. The following factors are relevant: "the burden on the defendant, the forum State's interest in adjudicating the dispute, the plaintiff's interest in obtaining convenient and effective relief, the interstate judicial system's interest in obtaining the most efficient resolution of controversies, and the shared interest of the several States in furthering fundamental substantive social policies." *Tamburo*, 601 F.3d at 709.

As to the first factor, the defendants presented evidence that they are not located or incorporated in Illinois have no meaningful business operations in the state. Requiring Japanese and Bermudan companies to litigate in Illinois would impose a substantial burden on them. *See Labtest Int'l, Inc. v. Ctr. Testing Int'l Corp.*, 766 F. Supp. 2d 854, 864 (N.D. Ill. 2011) ("The exercise of jurisdiction over [the defendant] by an Illinois court would impose a significant burden on [the defendant], as its Shenzhen headquarters is located nearly 8,000 miles from Chicago."). The plaintiffs point to the fact that Sompo

sent members of its team to the United States for the 2001 AIC exhibition and that Sompo has participated in other lawsuits in U.S. federal court as evidence that the company can litigate its claims here. (R. 67 at 44.) But just because Sompo employees have traveled to the United States in the past or previously participated in litigation in the U.S. does not mean that this lawsuit would not be burdensome to them.

Moreover, Illinois does not have a particular interest in this dispute. As repeatedly explained, none of the parties are residents of this state, and apart from the brief display of *Sunflowers* at the AIC over twenty years ago, none of the conduct at issue occurred here. The plaintiffs assert, in conclusory fashion, that the defendants committed "torts and crimes" in Illinois (R. 67 at 44), but they do not identify any crimes that Sompo has been charged with in Illinois or explain how Sompo's actions have harmed Illinois residents. This factor weighs in favor of declining to exercise personal jurisdiction as well.

The next factor is the plaintiffs' interest in obtaining effective relief. This factor does not favor bringing the action in Illinois, since "[t]he plaintiff, defendant, most, if not all witnesses, and documentary evidence are located outside Illinois." *Hot Wax, Inc.*, 1999 WL 183776, at *7.

That leaves the interstate judicial system's interest in obtaining the most efficient resolution of controversies, and the shared interest of the several States in furthering fundamental substantive social policies. *Dworkin*, 601 F.3d at 709. There is no question that returning art

expropriated by the Nazis is a desirable social policy. At the same time, "this Court's authority does not extend to serving as the enforcing agent for matters of conscience, or of justice in the abstract." *Haven v. Rzeczpospolita Polska*, 68 F. Supp. 2d 947, 957 (N.D. Ill. 1999), *aff'd* 215 F.3d 727 (7th Cir. 2000). The fact that Sompo's unlawful conversion of *Sunflowers* took place in London and that the painting currently resides in Japan means that Illinois' interest in adjudicating this dispute is limited at best. And while the plaintiffs point to the United States' interest in returning stolen Nazi art as a signatory of the Terezin Declaration, they identify no Illinois-specific interests and fail to explain why adjudicating this dispute outside of Illinois would be contrary to principles of interstate federalism.

Accordingly, the Court grants the defendants' motion and dismisses the plaintiffs' remaining claims due to lack of personal jurisdiction. The Court does not reach the parties' arguments as to whether dismissal on the grounds of *forum non conveniens* is appropriate. *Harbor Grand, LLC v. EMCASCO Ins. Co.*, No. 21 C 5335, 2022 WL 4079436, at *1 (N.D. Ill. Sept. 6, 2022). Nor does the Court address arguments raised in the plaintiff's sur-reply concerning the applicability of the HEAR Act and Sompo's ability to invoke *forum non conveniens.*

Appendix D

CONCLUSION

For the reasons stated in this Memorandum Opinion and Order, the defendants' motion to dismiss [28, 57] is granted. Civil case terminated.

Date: June 3, 2024

/s/ Jeremy C. Daniel
Jeremy C. Daniel
United States District Judge

APPENDIX E — JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, DATED JUNE 10, 2024

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF ILLINOIS

Case No. 22 CV 7013
Judge Jeremy C. Daniel

SCHOEPS *et al*,

Plaintiff(s),

v.

SOMPO HOLDINGS, INC. *et al*,

Defendant(s).

AMENDED JUDGMENT IN A CIVIL CASE

Judgment is hereby entered (check appropriate box):

☐ in favor of plaintiff(s)
and against defendant(s)
in the amount of $.

which ☐ includes pre–judgment interest.
☐ does not include pre–judgment interest.

Post-judgment interest accrues on that amount at the rate provided by law from the date of this judgment.

Plaintiff(s) shall recover costs from defendant(s).

in favor of defendant(s) Sompo Holdings, Inc. et al
and against plaintiff(s) Schoeps et al

☐ in favor of defendant(s) Sompo Holdings, Inc. et al and against plaintiff(s) Schoeps et al

Defendant(s) shall recover costs from plaintiff(s).

☐ other:

This action was *(check one)*:

☐ tried by a jury with Judge presiding, and the jury has rendered a verdict.
☐ tried by Judge without a jury and the above decision was reached.
☐ decided by Judge Jeremy C. Daniel on a motion to dismiss.

Date: 6/10/2024 Thomas G. Bruton, Clerk of Court

Vettina Franklin, Deputy Clerk

APPENDIX F — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION, FILED FEBRUARY 10, 2025

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 22-cv-07013

JULIUS H. SCHOEPS, *et al.*,

Plaintiffs,

v.

SOMPO HOLDINGS INC., *et al.*,

Defendants.

Judge Jeremy C. Daniel

ORDER

The plaintiffs' motion to alter or amend a judgment under Fed. R. Civ. P. 59(e) [77] is denied. The plaintiff's motion for leave to file an amended complaint [79] is denied.

STATEMENT

The plaintiffs' motion to alter or amend a judgment is not a motion as much as it is a list of grievances and

disagreements with the Court's prior order. Rather than explain how the Court erred, the plaintiffs simply rehash previously rejected arguments. "Rule 59(e) allows a court to alter or amend a judgment only if the petitioner can demonstrate a manifest error of law or present newly discovered evidence." *Ewing v. 1645 W. Farragut LLC*, 90 F.4th 876, 893 (7th Cir. 2024) (quoting *Obriecht v. Raemisch*, 517 F.3d 489, 494 (7th Cir. 2008)). However, "[r]econsideration is not an appropriate forum for rehashing previously rejected arguments or arguing matters that could have been heard during the pendency of the previous motion." *Ahmed v. Ashcroft*, 388 F.3d 247, 249 (7th Cir. 2004) (quoting *Caisse Nationale de Credit Agricole v. CBI Industries, Inc.*, 90 F.3d 1264, 1270 (7th Cir.1996)).

Here, the plaintiffs do not contend that the Court failed to address any of the plaintiffs' arguments. At least, when asked during a hearing, the plaintiffs did not identify any arguments they made in response to the defendants' motion to dismiss that the Court failed to address in its prior order. Further, the plaintiffs do not rely on any newly discovered evidence in support of their motion. Instead, the plaintiffs argue that the Court "failed to appreciate" this or that, and then refer the Court to the plaintiffs' prior pleadings. In other words, the plaintiffs made no attempt to explain how or why the rulings the plaintiffs disagree with were wrong. "[P]erfunctory and undeveloped arguments, and arguments that are unsupported by pertinent authority, are waived." *Hakim v. Safariland, LLC*, 79 F.4th 861, 872 (7th Cir. 2023) (quoting *Crespo v. Colvin*, 824 F.3d 667, 674 (7th Cir. 2016)).

Specifically, the plaintiffs contend that the Court failed "to appreciate that Congress enacted the Holocaust Expropriated Art Recovery Act of 2016 . . . to accomplish the prescribed foreign policy objectives of the Terezin Declaration." (R. 77-1 at 2.) According to the plaintiffs, "the Act necessarily gives the foreign policies embedded in the Declaration preemptive legal effect in domestic U.S. law." (*Id.* at 3.) This is an extension of the plaintiffs' previously rejected argument that "it is the broader and predominant U.S. foreign policy which the HEAR Act expressly attributes to . . . and not the Act itself – that authorizes a court to apply federal common law in this area (if necessary) to protect these foreign policy imperatives." (R. 67 at 12.) The Court disagreed with this position then, (R. 74 at 13-14), and disagrees with it now. More importantly, the plaintiffs have done nothing to show a manifest error of law.

The plaintiffs also contend that the Court's exercise of subject matter jurisdiction over the plaintiffs' state law claims shows that the Court "necessarily . . . enjoys equitable authority to protect the very federal interests that confer subject matter jurisdiction over it." (R. 77-1 at 3.) The plaintiffs further contend that the Court should use its "inherent and extensive equitable authority . . . to protect and promote federal interests." (R. 77-1 at 4.) Other than including the two contentions in the same paragraph, the plaintiffs fail to tie the two together or otherwise develop the argument.

To be clear, the Court held that subject matter jurisdiction exists because the HEAR Act extends the

statute of limitations for the plaintiffs' state law claims under *Gunn v. Minton*, 568 U.S. 251 (2013). (R. 745, n.1.) The plaintiffs do not take issue with the Court's finding; rather, they contend that this finding clears the way for the Court, under the guise of its "inherent and extensive equitable authority" to do what the plaintiffs ask. But the Court is constrained by the law, and when exercising jurisdiction over state law claims, the Court would apply state common law to those claims—not create any federal common law or otherwise exercise its authority in a manner that would disrupt the federal-state balance. It remains unclear to the Court how it has failed to advance the "very federal interests" implicated by the HEAR Act by doing what the act requires. The Court does not see an error here.

The plaintiffs further contend that the Court erred by failing to exercise its equitable authority to "protect and promote the prescribed U.S. foreign policies, as well as to redress the [defendants] continuing inequitable misconduct." (R. 77-1 at 4.) This repeats the plaintiffs prior argument that "the Court enjoys plenary equitable authority . . . both to return *Sunflowers* to the Heirs and to compel Defendants to restore the unjust enrichment that they wrongfully have reaped." (R. 67 at 2.) Again, the plaintiffs have done nothing to show a manifest error of law.

The plaintiffs further contend that the Court erred by concluding that it lacked equitable authority over the plaintiffs' claims because the claims did not arise under federal common law. (R. 77-1 at 4.) The plaintiffs argue

that the authority of the federal courts does not depend on their authority to formulate federal common law. (*Id.*) This is another version of the plaintiffs earlier "equitable authority" argument, and it fails for the same reasons the equitable authority argument failed.

The plaintiffs' further contend that the Court erred by concluding it lacked the authority "to formulate appropriate federal common law to protect the signal federal foreign policy goals upon which the [plaintiffs] claims are based." (R. 77-1 at 4-5.) The plaintiffs previously argued that the Court could "create federal common law to protect acute U.S. foreign policy interests when state law fails to do so." (R. 67 at 12.) The Court disagreed with this position then, (R. 74 at 14), disagrees with it now, and finds that the plaintiffs have done nothing to show a manifest error of law.

The plaintiffs further contend that the Court failed to appreciate "an important U.S. and diplomatic foreign policy commitment of both Congress and the President to the fellow Declaration signatory nations, as well as a tacit directive to the Federal Judiciary . . . to achieve these objectives." The plaintiffs fail to point to any authority authorizing federal courts to act on "tacit directives" from the legislative or executive branches. The legislature was explicit when it passed the HEAR Act, and it's not for the Court to intuit additional "directives" beyond those set forth in the text of the statute. Again, the plaintiffs have done nothing to show a manifest error of law.

Appendix F

The plaintiffs also set forth several contentions related to personal jurisdiction. The plaintiffs contend that: (1) the Court failed to invoke the "maximal authority of the Fourteenth Amendment's Due Process Clause to assert specific jurisdiction over the defendants," (R. 77-1 at 5-6), which the plaintiff's argued in their response to the defendants' motion to dismiss; (2) the Court failed to acknowledge the defendant's extensive contacts with Illinois based on the 2001 exhibition of *Sunflowers*, (R. 77-1 at 6), which the plaintiffs also argued in their response to the defendant's motion to dismiss (R. 67 at 26 ("extensive contacts with Illinois both in displaying the painting at the 2001 exhibition and later perpetually employing it on the Sompo Holdings website as banding and marketing")); (3) the Court failed to acknowledge the extensive contacts with Illinois the defendants have in light of the plaintiffs' unjust enrichment claim, (R. 77-1 at 6), which is similar to the plaintiffs contention that the defendants "exercised unlawful dominion and control over the Painting and commercially exploited it to reap unjust enrichment both at the 2001 Exhibition and perpetually since then on their website more than satisfies this requirement," (R. 67 at 32), which the Court addressed (R. 74 at 22-28); (4) the Court ignored the defendants' contacts with Illinois in light of the plaintiffs' conversion claim, (R. 77-1 at 7), which the Court addressed (R. 74 at 33); (5) the Court overlooked the defendants' extensive misconduct in Illinois selling insurance (R. 77-1 at 7), which itself overlooks the Court's discussion of this topic and the plaintiffs' failure to show that the conduct of a subsidiary should be imputed to a parent (*see* R. 74 at 22-24); (6) the Court "repudiated and discredited" the Spangenberg Declaration, (R. 77-1

at 7), which either misreads or misrepresents the Court's treatment of that declaration, (R. 74 at 26-7 ("A skeptical reader might think it implausible . . . As it pertains to personal jurisdiction, however, the fundamental issue with the plaintiffs' branding theory is that using archetypes to market products to consumers is conceptually no different than using nationwide advertisement . . . Even accepting the notion that Sompo is using archetypes created by Sunflowers to influence potential customers, there is no evidence that it is doing so in Illinois specifically.)); (7) the Court failed to exercise specific jurisdiction over a parent company whose subsidiaries conduct the business of the parent company, (R. 77-1 at 8); (8) the Court ignored allegations that the defendants have "committed a host of torts and crimes regarding their colossal and perpetual misconduct with [*Sunflowers*], (R. 77-1 at 9), even though the Court specifically addressed this argument, (*see*, *e.g.*, R. 74 at 32); (9) the Court allowed state corporations to be used to frustrate or evade federal laws and policies, (R. 77-1 at 9); (10) the Court misapplied the substantive law of piercing the corporate veil, (R. 77-1 at 9-10); and (11) the Court erred by finding no personal jurisdiction because the defendants do not target Illinois specifically, (R. 77-1 at 10).

For most of these contentions, it is sufficient to say that the Court disagreed with the plaintiffs' position when ruling on the motion to dismiss, disagrees with the plaintiff's position now, and the plaintiffs have done nothing to show a manifest error of law. For those contentions where the plaintiffs attempted to explain the error, the Court finds the plaintiffs contentions lack

merit. Specifically, the plaintiffs now cite *IDS Life Ins. Co. v. SunAmerica Life Ins. Co.*, 136 F.3d 537, 541 (7th Cir. 1998), which explains that one could establish personal jurisdiction over a parent company based on a subsidiary's conduct where the subsidiary conducts the parents rather than its own business. The Court also recognizes that "an agent's conduct directed at the forum state has long been considered pertinent in the specific personal jurisdiction context." *Bilek v. Fed. Ins. Co.*, 8 F.4th 581, 590 (7th Cir. 2021). But citing additional case law concerning various justifications for extending personal jurisdiction to a parent entity does not change that the plaintiffs have not shown that one entities' contacts with Illinois should be imputed to another entity. (*See* R. 74 at 17-18.) While "the Heirs invoke multiple supporting legal doctrines including *alter ego*, agency, aiding and abetting, 'piercing the corporate veil' for fraud, and employing a corporation to frustrate federal policy," (R. 67 at 2), the plaintiffs have not shown that any of them apply.

For these reasons, the Court denies the plaintiffs' motion to alter

Date: February 10, 2025

/s/ Jeremy C. Daniel
JEREMY C. DANIEL
United States District Judge

APPENDIX G — HOLOCAUST EXPROPRIATED ART RECOVERY ACT

HOLOCAUST EXPROPRIATED ART RECOVERY ACT OF 2016

Public Law 114–308
114th Congress

An Act

To provide the victims of Holocaust-era persecution and their heirs a fair opportunity to recover works of art confiscated or misappropriated by the Nazis.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Holocaust Expropriated Art Recovery Act of 2016".

SEC. 2. FINDINGS.

Congress finds the following:

(1) It is estimated that the Nazis confiscated or otherwise misappropriated hundreds of thousands of works of art and other property throughout Europe as part of their genocidal campaign against the

Jewish people and other persecuted groups. This has been described as the "greatest displacement of art in human history".

(2) Following World War II, the United States and its allies attempted to return the stolen artworks to their countries of origin. Despite these efforts, many works of art were never reunited with their owners. Some of the art has since been discovered in the United States.

(3) In 1998, the United States convened a conference with 43 other nations in Washington, DC, known as the Washington Conference, which produced Principles on Nazi-Confiscated Art. One of these principles is that "steps should be taken expeditiously to achieve a just and fair solution" to claims involving such art that has not been restituted if the owners or their heirs can be identified.

(4) The same year, Congress enacted the Holocaust Victims Redress Act (Public Law 105–158, 112 Stat. 15), which expressed the sense of Congress that "all governments should undertake good faith efforts to facilitate the return of private and public property, such as works of art, to the rightful owners in cases where assets were confiscated from the claimant during the period of Nazi rule and there is reasonable proof that the claimant is the rightful owner.".

(5) In 2009, the United States participated in a Holocaust Era Assets Conference in Prague, Czech

Republic, with 45 other nations. At the conclusion of this conference, the participating nations issued the Terezin Declaration, which reaffirmed the 1998 Washington Conference Principles on Nazi-Confiscated Art and urged all participants ''to ensure that their legal systems or alternative processes, while taking into account the different legal traditions, facilitate just and fair solutions with regard to Nazi-confiscated and looted art, and to make certain that claims to recover such art are resolved expeditiously and based on the facts and merits of the claims and all the relevant documents submitted by all parties.''. The Declaration also urged participants to ''consider all relevant issues when applying various legal provisions that may impede the restitution of art and cultural property, in order to achieve just and fair solutions, as well as alternative dispute resolution, where appropriate under law.''.

(6) Victims of Nazi persecution and their heirs have taken legal action in the United States to recover Nazi-confiscated art. These lawsuits face significant procedural obstacles partly due to State statutes of limitations, which typically bar claims within some limited number of years from either the date of the loss or the date that the claim should have been discovered. In some cases, this means that the claims expired before World War II even ended. (See, e.g., Detroit Institute of Arts v. Ullin, No. 06–10333, 2007 WL 1016996 (E.D. Mich. Mar. 31, 2007).) The unique and horrific circumstances

of World War II and the Holocaust make statutes of limitations especially burdensome to the victims and their heirs. Those seeking recovery of Nazi-confiscated art must painstakingly piece together their cases from a fragmentary historical record ravaged by persecution, war, and genocide. This costly process often cannot be done within the time constraints imposed by existing law.

(7) Federal legislation is needed because the only court that has considered the question held that the Constitution prohibits States from making exceptions to their statutes of limitations to accommodate claims involving the recovery of Nazi-confiscated art. In Von Saher v. Norton Simon Museum of Art, 592 F.3d 954 (9th Cir. 2009), the United States Court of Appeals for the Ninth Circuit invalidated a California law that extended the State statute of limitations for claims seeking recovery of Holocaust-era artwork. The Court held that the law was an unconstitutional infringement of the Federal Government's exclusive authority over foreign affairs, which includes the resolution of war-related disputes. In light of this precedent, the enactment of a Federal law is necessary to ensure that claims to Nazi-confiscated art are adjudicated in accordance with United States policy as expressed in the Washington Conference Principles on Nazi-Confiscated Art, the Holocaust Victims Redress Act, and the Terezin Declaration.

(8) While litigation may be used to resolve claims to recover Nazi-confiscated art, it is the sense

of Congress that the private resolution of claims by parties involved, on the merits and through the use of alternative dispute resolution such as mediation panels established for this purpose with the aid of experts in provenance research and history, will yield just and fair resolutions in a more efficient and predictable manner.

SEC. 3. PURPOSES.

The purposes of this Act are the following:

(1) To ensure that laws governing claims to Nazi-confiscated art and other property further United States policy as set forth in the Washington Conference Principles on Nazi-Confiscated Art, the Holocaust Victims Redress Act, and the Terezin Declaration.

(2) To ensure that claims to artwork and other property stolen or misappropriated by the Nazis are not unfairly barred by statutes of limitations but are resolved in a just and fair manner.

SEC. 4. DEFINITIONS.

In this Act:

(1) ACTUAL DISCOVERY.—The term "actual discovery" means knowledge.

(2) ARTWORK OR OTHER PROPERTY.—The term "artwork or other property" means—

(A) pictures, paintings, and drawings;

(B) statuary art and sculpture;

(C) engravings, prints, lithographs, and works of graphic art;

(D) applied art and original artistic assemblages and montages;

(E) books, archives, musical objects and manuscripts (including musical manuscripts and sheets), and sound, photographic, and cinematographic archives and mediums; and

(F) sacred and ceremonial objects and Judaica.

(3) COVERED PERIOD.—The term ''covered period'' means the period beginning on January 1, 1933, and ending on December 31, 1945.

(4) KNOWLEDGE.—The term "knowledge" means having actual knowledge of a fact or circumstance or sufficient information with regard to a relevant fact or circumstance to amount to actual knowledge thereof.

(5) NAZI PERSECUTION.—The term ''Nazi persecution'' means any persecution of a specific group of individuals based on Nazi ideology by the Government of Germany, its allies or agents,

members of the Nazi Party, or their agents or associates, during the covered period.

SEC. 5. STATUTE OF LIMITATIONS.

(a) IN GENERAL.—Notwithstanding any other provision of Federal or State law or any defense at law relating to the passage of time, and except as otherwise provided in this section, a civil claim or cause of action against a defendant to recover any artwork or other property that was lost during the covered period because of Nazi persecution may be commenced not later than 6 years after the actual discovery by the claimant or the agent of the claimant of—

(1) the identity and location of the artwork or other property; and

(2) a possessory interest of the claimant in the artwork or other property.

(b) POSSIBLE MISIDENTIFICATION.—For purposes of subsection (a)(1), in a case in which the artwork or other property is one of a group of substantially similar multiple artworks or other property, actual discovery of the identity and location of the artwork or other property shall be deemed to occur on the date on which there are facts sufficient to form a substantial basis to believe that the artwork or other property is the artwork or other property that was lost.

(c) PREEXISTING CLAIMS.—Except as provided in subsection (e), a civil claim or cause of action described

in subsection (a) shall be deemed to have been actually discovered on the date of enactment of this Act if—

(1) before the date of enactment of this Act—

(A) a claimant had knowledge of the elements set forth in subsection (a); and

(B) the civil claim or cause of action was barred by a Federal or State statute of limitations; or

(2)(A) before the date of enactment of this Act, a claimant had knowledge of the elements set forth in subsection (a); and

(B) on the date of enactment of this Act, the civil claim or cause of action was not barred by a Federal or State statute of limitations.

(d) APPLICABILITY.—Subsection (a) shall apply to any civil claim or cause of action that is—

(1) pending in any court on the date of enactment of this Act, including any civil claim or cause of action that is pending on appeal or for which the time to file an appeal has not expired; or

(2) filed during the period beginning on the date of enactment of this Act and ending on December 31, 2026.

(e) EXCEPTION.—Subsection (a) shall not apply to any civil claim or cause of action barred on the day before the date of enactment of this Act by a Federal or State statute of limitations if—

(1) the claimant or a predecessor-in-interest of the claimant had knowledge of the elements set forth in subsection (a) on or after January 1, 1999; and

(2) not less than 6 years have passed from the date such claimant or predecessor-in-interest acquired such knowledge and during which time the civil claim or cause of action was not barred by a Federal or State statute of limitations.

(f) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to create a civil claim or cause of action under Federal or State law.

(g) SUNSET.—This Act shall cease to have effect on January 1, 2027, except that this Act shall continue to apply to any civil claim or cause of action described in subsection (a) that is pending on January 1, 2027. Any civil claim or cause of action commenced on or after that date to recover artwork or other property described in this Act shall be subject to any applicable Federal or State statute of limitations or any other Federal or State defense at law relating to the passage of time.

Approved December 16, 2016

APPENDIX H — TEREZIN DECLARATION, JUNE 30, 2009

TEREZIN DECLARATION
June 30, 2009

Upon the invitation of the Prime Minister of the Czech Republic we the representatives of 46 states listed below met this day, June 30, 2009 in Terezin, where thousands of European Jews and other victims of Nazi persecution died or were sent to death camps during World War II. We participated in the Prague Holocaust Era Assets Conference organized by the Czech Republic and its partners in Prague and Terezin from 26-30 June 2009, discussed together with experts and non-governmental organization (NGO) representatives important issues such as Welfare of Holocaust (Shoah) Survivors and other Victims of Nazi Persecution, Immovable Property, Jewish Cemeteries and Burial Sites, Nazi-Confiscated and Looted Art, Judaica and Jewish Cultural Property, Archival Materials, and Education, Remembrance, Research and Memorial Sites. We join affirming in this

Terezin Declaration on Holocaust Era Assets and Related Issues

- Aware that Holocaust (Shoah) survivors and other victims of Nazi persecution have reached an advanced age and that it is imperative to respect their personal dignity and to deal with their social welfare needs, as an issue of utmost urgency,

- Having in mind the need to enshrine for the benefit of future generations and to remember forever the unique history and the legacy of the Holocaust (Shoah), which

exterminated three fourths of European Jewry, including its premeditated nature as well as other Nazi crimes,

- Noting the tangible achievements of the 1997 London Nazi Gold Conference, and the 1998 Washington Conference on Holocaust-Era Assets, which addressed central issues relating to restitution and successfully set the stage for the significant advances of the next decade, as well as noting the January 2000 Stockholm Declaration, the October 2000 Vilnius Conference on Holocaust Era Looted Cultural Assets,

- Recognizing that despite those achievements there remain substantial issues to be addressed, because only a part of the confiscated property has been recovered or compensated,

- Taking note of the deliberations of the Working Groups and the Special Session on Social Welfare of Holocaust Survivors and their points of view and opinions which surveyed and addressed issues relating to the Social Welfare of Holocaust Survivors and other Victims of Nazi Persecution, Immovable Property, Nazi Confiscated Art, Judaica and Jewish Cultural Property, Holocaust Education, Remembrance and Research, which can be found on the weblink for the Prague Conference and will be published in the Conference Proceedings,

- Keeping in mind the legally non-binding nature of this Declaration and moral responsibilities thereof, and without prejudice to applicable international law and obligations,

Appendix H

1. Recognizing that Holocaust (Shoah) survivors and other victims of the Nazi regime and its collaborators suffered unprecedented physical and emotional trauma during their ordeal, the Participating States take note of the special social and medical needs of all survivors and strongly support both public and private efforts in their respective states to enable them to live in dignity with the necessary basic care that it implies.

2. Noting the importance of restituting communal and individual immovable property that belonged to the victims of the Holocaust (Shoah) and other victims of Nazi persecution, the Participating States urge that every effort be made to rectify the consequences of wrongful property seizures, such as confiscations, forced sales and sales under duress of property, which were part of the persecution of these innocent people and groups, the vast majority of whom died heirless.

3. Recognizing the progress that has been made in research, identification, and restitution of cultural property by governmental and non-governmental institutions in some states since the 1998 Washington Conference on Holocaust-Era Assets and the endorsement of the Washington Conference Principles on Nazi-Confiscated Art, the Participating States affirm an urgent need to strengthen and sustain these efforts in order to ensure just and fair solutions regarding cultural property, including Judaica that was looted or displaced during or as a result of the Holocaust (Shoah).

4. Taking into account the essential role of national governments, the Holocaust (Shoah) survivors'

organizations, and other specialized NGOs, the Participating States call for a coherent and more effective approach by States and the international community to ensure the fullest possible, relevant archival access with due respect to national legislation. We also encourage States and the international community to establish and support research and education programs about the Holocaust (Shoah) and other Nazi crimes, ceremonies of remembrance and commemoration, and the preservation of memorials in former concentration camps, cemeteries and mass graves, as well as of other sites of memory.

5. Recognizing the rise of Anti-Semitism and Holocaust (Shoah) denial, the Participating States call on the international community to be stronger in monitoring and responding to such incidents and to develop measures to combat anti-Semitism.

The Welfare of Holocaust (Shoah) Survivors and other Victims of Nazi Persecution

Recognizing that Holocaust (Shoah) survivors and other victims of Nazi persecution, including those who experienced the horrors of the Holocaust (Shoah) as small and helpless children, suffered unprecedented physical and emotional trauma during their ordeal.

Mindful that scientific studies document that these experiences frequently result in heightened damage to health, particularly in old age, we place great priority on dealing with their social welfare needs in their lifetimes. It is unacceptable that those who suffered so greatly

during the earlier part of their lives should live under impoverished circumstances at the end.

1. We take note of the fact that Holocaust (Shoah) survivors and other victims of Nazi persecution have today reached an advanced age and that they have special medical and health needs, and we therefore support, as a high priority, efforts to address in their respective states the social welfare needs of the most vulnerable elderly victims of Nazi persecution – such as hunger relief, medicine and homecare as required, as well as measures that will encourage intergenerational contact and allow them to overcome their social isolation. These steps will enable them to live in dignity in the years to come. We strongly encourage cooperation on these issues.

2. We further take note that several states have used a variety of creative mechanisms to provide assistance to needy Holocaust (Shoah) survivors and other victims of Nazi persecution, including special pensions; social security benefits to non-residents; special funds; and the use of assets from heirless property. We encourage states to consider these and other alternative national actions, and we further encourage them to find ways to address survivors' needs.

Immovable (Real) Property

Noting that the protection of property rights is an essential component of a democratic society and the rule of law,

Appendix H

Acknowledging the immeasurable damage sustained by individuals and Jewish communities as a result of wrongful property seizures during the Holocaust (Shoah),

Recognizing the importance of restituting or compensating Holocaust-related confiscations made during the Holocaust era between 1933-45 and as its immediate consequence,

Noting the importance of recovering communal and religious immovable property in reviving and enhancing Jewish life, ensuring its future, assisting the welfare needs of Holocaust (Shoah) survivors, and fostering the preservation of Jewish cultural heritage,

1. We urge, where it has not yet been effectively achieved, to make every effort to provide for the restitution of former Jewish communal and religious property by either in rem restitution or compensation, as may be appropriate; and

2. We consider it important, where it has not yet been effectively achieved, to address the private property claims of Holocaust (Shoah) victims concerning immovable (real) property of former owners, heirs or successors, by either in rem restitution or compensation, as may be appropriate, in a fair, comprehensive and nondiscriminatory manner consistent with relevant national law and regulations, as well as international agreements. The process of such restitution or compensation should be expeditious, simple, accessible, transparent, and neither burdensome nor costly to the individual claimant; and we note other positive legislation in this area.

3. We note that in some states heirless property could serve as a basis for addressing the material necessities of needy Holocaust (Shoah) survivors and to ensure ongoing education about the Holocaust (Shoah), its causes and consequences.

4. We recommend, where it has not been done, that states participating in the Prague Conference consider implementing national programs to address immovable (real) property confiscated by Nazis, Fascists and their collaborators. If and when established by the Czech Government, the European Shoah Legacy Institute in Terezin shall facilitate an intergovernmental effort to develop non-binding guidelines and best practices for restitution and compensation of wrongfully seized immovable property to be issued by the one-year anniversary of the Prague Conference, and no later than June 30, 2010, with due regard for relevant national laws and regulations as well as international agreements, and noting other positive legislation in this area.

Jewish Cemeteries and Burial Sites

Recognizing that the mass destruction perpetrated during the Holocaust (Shoah) put an end to centuries of Jewish life and included the extermination of thousands of Jewish communities in much of Europe, leaving the graves and cemeteries of generations of Jewish families and communities unattended, and

Aware that the genocide of the Jewish people left the human remains of hundreds of thousands of murdered

Jewish victims in unmarked mass graves scattered throughout Central and Eastern Europe,

We urge governmental authorities and municipalities as well as civil society and competent institutions to ensure that these mass graves are identified and protected and that the Jewish cemeteries are demarcated, preserved and kept free from desecration, and where appropriate under national legislation could consider declaring these as national monuments.

Nazi-Confiscated and Looted Art

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

Recalling the Washington Conference Principles on Nazi-Confiscated Art as endorsed at the Washington Conference of 1998, which enumerated a set of voluntary commitments for governments that were based upon the moral principle that art and cultural property confiscated by the Nazis from Holocaust (Shoah) victims should be returned to them or their heirs, in a manner consistent with national laws and regulations as well as international obligations, in order to achieve just and fair solutions,

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

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

3. Keeping in mind the Washington Conference Principles on Nazi-Confiscated Art, and considering the experience acquired since the Washington Conference, we urge all stakeholders to ensure that their legal systems or alternative processes, while taking into account the different legal traditions, facilitate just and fair solutions with regard to Nazi-confiscated and looted art, and to make certain that claims to recover such art are resolved expeditiously and based on the facts and merits of the claims and all the relevant documents submitted by all parties. Governments should consider all relevant issues when applying various legal provisions that may impede the restitution of art and cultural property, in order to achieve just and fair solutions, as well as alternative dispute resolution, where appropriate under law.

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Judaica and Jewish Cultural Property

Recognizing that the Holocaust (Shoah) also resulted in the wholesale looting of Judaica and Jewish cultural property including sacred scrolls, synagogue and ceremonial objects as well as the libraries, manuscripts, archives and records of Jewish communities, and

Aware that the murder of six million Jews, including entire communities, during the Holocaust (Shoah) meant that much of this historical patrimony could not be reclaimed after World War II, and

Recognizing the urgent need to identify ways to achieve a just and fair solution to the issue of Judaica and Jewish cultural property, where original owners, or heirs of former original Jewish owners, individuals or legal persons cannot be identified, while acknowledging there is no universal model,

1. We encourage and support efforts to identify and catalogue these items which may be found in archives, libraries, museums and other government and non-government repositories, to return them to their original rightful owners and other appropriate individuals or institutions according to national law, and to consider a voluntary international registration of Torah scrolls and other Judaica objects where appropriate, and

2. We encourage measures that will ensure their protection, will make appropriate materials available to scholars, and where appropriate and possible in terms of

conservation, will restore sacred scrolls and ceremonial objects currently in government hands to synagogue use, where needed, and will facilitate the circulation and display of such Judaica internationally by adequate and agreed upon solutions.

Archival Materials

Whereas access to archival documents for both claimants and scholars is an essential element for resolving questions of the ownership of Holocaust-era assets and for advancing education and research on the Holocaust (Shoah) and other Nazi crimes,

Acknowledging in particular that more and more archives have become accessible to researchers and the general public, as witnessed by the Agreement reached on the archives of the International Tracing Service (ITS) in Bad Arolsen, Germany,

Welcoming the return of archives to the states from whose territory they were removed during or as an immediate consequence of the Holocaust (Shoah),

We encourage governments and other bodies that maintain or oversee relevant archives to make them available to the fullest extent possible to the public and researchers in accordance with the guidelines of the International Council on Archives, with due regard to national legislation, including provisions on privacy and data protection, while also taking into account the special circumstances created by the Holocaust era and

the needs of the survivors and their families, especially in cases concerning documents that have their origin in Nazi rules and laws.

Education, Remembrance, Research and Memorial Sites

Acknowledging the importance of education and remembrance about the Holocaust (Shoah) and other Nazi crimes as an eternal lesson for all humanity,

Recognizing the preeminence of the Stockholm Declaration on Holocaust Education, Remembrance and Research of January 2000,

Recognizing that the Universal Declaration of Human Rights was drafted in significant part in the realization of the horrors that took place during the Holocaust, and further recognizing the U.N. Convention on the Prevention and Punishment of the Crime of Genocide,

Recalling the action of the United Nations and of other international and national bodies in establishing an annual day of Holocaust remembrance,

Saluting the work of the Task Force for International Cooperation on Holocaust Education, Remembrance and Research (ITF) as it marks its tenth anniversary, and encouraging the States participating in the Prague Conference to cooperate closely with the Task Force, and

Repudiating any denial of the Holocaust (Shoah) and combating its trivialization or diminishment, while

encouraging public opinion leaders to stand up against such denial, trivialization or diminishment,

1. We strongly encourage all states to support or establish regular, annual ceremonies of remembrance and commemoration, and to preserve memorials and other sites of memory and martyrdom. We consider it important to include all individuals and all nations who were victims of the Nazi regime in a worthy commemoration of their respective fates,

2. We encourage all states as a matter of priority to include education about the Holocaust (Shoah) and other Nazi crimes in the curriculum of their public education systems and to provide funding for the training of teachers and the development or procurement of the resources and materials required for such education.

3. Believing strongly that international human rights law reflects important lessons from history, and that the understanding of human rights is essential for confronting and preventing all forms of racial, religious or ethnic discrimination, including Anti-Semitism, and Anti-Romani sentiment, today we are committed to including human rights education into the curricula of our educational systems. States may wish to consider using a variety of additional means to support such education, including heirless property where appropriate.

4. As the era is approaching when eye witnesses of the Holocaust (Shoah) will no longer be with us and when the sites of former Nazi concentration and extermination

camps, will be the most important and undeniable evidence of the tragedy of the Holocaust (Shoah), the significance and integrity of these sites including all their movable and immovable remnants, will constitute a fundamental value regarding all the actions concerning these sites, and will become especially important for our civilization including, in particular, the education of future generations. We, therefore, appeal for broad support of all conservation efforts in order to save those remnants as the testimony of the crimes committed there to the memory and warning for the generations to come and where appropriate to consider declaring these as national monuments under national legislation.

Future Action

Further to these ends we welcome and are grateful for the Czech Government´s initiative to establish the European Shoah Legacy Institute in Terezin (Terezin Institute) to follow up on the work of the Prague Conference and the Terezin Declaration. The Institute will serve as a voluntary forum for countries, organisations representing Holocaust (Shoah) survivors and other Nazi victims, and NGOs to note and promote developments in the areas covered by the Conference and this Declaration, and to develop and share best practices and guidelines in these areas and as indicated in paragraph four of Immovable (Real) Property. It will operate within the network of other national, European and international institutions, ensuring that duplicative efforts are avoided, for example, duplication of the activities of the Task Force for International Cooperation on Holocaust Education, Remembrance and Research (ITF).

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Following the conference proceedings and the Terezin Declaration, the European Commission and the Czech Presidency have noted the importance of the Institute as one of the instruments in the fight against racism, xenophobia and anti-Semitism in Europe and the rest of the world, and have called for other countries and institutions to support and cooperate with this Institute.

To facilitate the dissemination of information, the Institute will publish regular reports on activities related to the Terezin Declaration. The Institute will develop websites to facilitate sharing of information, particularly in the fields of art provenance, immovable property, social welfare needs of survivors, Judaica, and Holocaust education. As a useful service for all users, the Institute will maintain and post lists of websites that Participating States, organizations representing Holocaust (Shoah) survivors and other Nazi victims and NGOs sponsor as well as a website of websites on Holocaust issues.

We also urge the States participating in the Prague Conference to promote and disseminate the principles in the Terezin Declaration, and encourage those states that are members of agencies, organizations and other entities which address educational, cultural and social issues around the world, to help disseminate information about resolutions and principles dealing with the areas covered by the Terezin Declaration.

A more complete description of the Czech Government´s concept for the Terezin Institute and the Joint Declaration of the European Commission and the Czech EU Presidency can be found on the website for the Prague Conference and will be published in the conference proceedings.

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List of States

1. Albania
2. Argentina
3. Australia
4. Austria
5. Belarus
6. Belgium
7. Bosnia and Herzegovina
8. Brazil
9. Bulgaria
10. Canada
11. Croatia
12. Cyprus
13. Czech Republic
14. Denmark
15. Estonia
16. Finland
17. France
18. FYROM
19. Germany
20. Greece
21. Hungary
22. Ireland
23. Israel
24. Italy
25. Latvia
26. Lithuania
27. Luxembourg
28. Malta
29. Moldova
30. Montenegro

31. The Netherlands
32. Norway
33. Poland
34. Portugal
35. Romania
36. Russia
37. Slovakia
38. Slovenia
39. Spain
40. Sweden
41. Switzerland
42. Turkey
43. Ukraine
44. United Kingdom
45. United States
46. Uruguay

The Holy See *(observer)*
Serbia *(observer)*

APPENDIX I — EXCERPTS FROM FIRST AMENDED COMPLAINT, UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

Case No. 1:22-cv-07013

JULIUS H. SCHOEPS, BRITT-MARIE ENHOERNING, AND FLORENCE VON KESSELSTATT,

Plaintiffs,

v.

SOMPO HOLDINGS, INC., SOMPO INTERNATIONAL HOLDINGS LTD., SOMPO FINE ART FOUNDATION, AND SOMPO JAPAN INSURANCE INC.,

Defendants.

Honorable Judge Manish S. Shah

FIRST AMENDED COMPLAINT FOR RESTITUTION AND UNJUST ENRICHMENT

JURY TRIAL DEMANDED

[TABLES INTENTIONALLY OMITTED]

Now come Plaintiffs Julius H. Schoeps (hereinafter "Schoeps"), Britt-Marie Enhoerning (hereinafter "Enhoerning"), and Florence von Kesselstatt (hereinafter "Kesselstatt") (together, "Plaintiffs"), by their attorneys, Byrne Goldenberg & Hamilton PLLC and K&L Gates LLP, and for their First Amended Complaint against Defendants Sompo Holdings, Inc. (hereinafter "Sompo Holdings"), Sompo International Holdings Ltd. (hereinafter "Sompo International"), Sompo Fine Art Foundation (hereinafter "Foundation"), and Sompo Japan Insurance Inc. (together, "Defendants"), allege as follows, based upon personal knowledge as to Plaintiffs' own acts, and upon information and belief as to all other matters based upon, *inter alia*, the investigation of counsel.

I. INTRODUCTION AND OVERVIEW

A. Nature of the Action and Summary of Claims

1. By this action, the heirs (hereinafter the "Mendelssohn heirs") of the late prominent Berlin Jewish banker and Nazi victim Paul von Mendelssohn-Bartholdy (hereinafter "Mendelssohn-Bartholdy" or "Paul") and the heirs of Mendelssohn-Bartholdy's widow, Elsa von Mendelssohn-Bartholdy (hereinafter "Elsa's heirs") seek to recover the iconic painting *Sunflowers* (hereinafter the "Painting") by the legendary artist Vincent van Gogh. The Mendelssohn heirs and Elsa's heirs will be referred to jointly as the "Heirs."

2. Mendelssohn-Bartholdy relinquished the Painting in Berlin in 1934 as one of many grave consequences of

the racially exclusionary Nazi policies and concomitant coercion calculated to evict Jews from the economy and society of Germany. These policies violated the modern international law of human rights and led ultimately to genocide. Sompo Holding's corporate predecessor – the Yasuda Fire and Marine Insurance Company (hereinafter "Yasuda") – acquired *Sunflowers* at auction in 1987 in reckless disregard of the Painting's provenance Germany in 1934. In 2001, Yasuda expressed its concern on several occasions that the Painting could be in jeopardy if exhibited in Chicago, at one point voicing concern about the Painting that "Nazis (sic) confiscation problem may arise in America and in Holland." (*See* Yasuda email of April 26, 2001 to the Art Institute of Chicago, attached as **Exhibit 1**.) Yet despite its extensive resources and art world expertise, Yasuda continued to avoid investigating the background of the Painting for fear of confirming the truth about its Nazi history. Instead – and since then – Defendants have commercially exploited as a corporate emblem what they long have all but ***known*** was a Nazi-tainted artwork. (This Complaint uses the terms "know," "knowledge" and their derivatives to mean, alternatively, knowledge in fact or reckless indifference sufficient to constitute constructive notice under relevant Illinois and U.S. law.) Moreover, the very ability of Sompo Holdings and its wholly owned subsidiaries to commercially exploit *Sunflowers* and to reap profits drawn from their corporate identification with this work of art has depended inescapably upon their conscious wrongdoing in concealing the Painting's Nazi taint while concomitantly and proactively misrepresenting that the Painting bears no international human rights stigma. Sompo's current and

ongoing ability to commercially exploit *Sunflowers* hinges similarly upon this conscious and continuing wrongdoing.

3. This action also seeks to recover the extensive unjust enrichment that Defendants wrongfully have reaped from capitalizing upon *Sunflowers* since recklessly acquiring the Painting in 1987, while both knowing (either in fact or by reckless indifference) that the Painting is a casualty of Nazi policies and falsely misrepresenting that it is not. Accordingly, the immense unjust enrichment that Defendants have realized from commercially exploiting *Sunflowers* since 1987 results necessarily – and inevitably from their serious, continuing, and conscious wrongdoing. The Heirs therefore ground their equitable claims in this proceeding upon the foundational maxim prohibiting conscious wrongdoers from benefiting from their misconduct, and upon elemental principles of estoppel that preclude wrongdoers such as the Defendants from profiting by characterizing or representing facts or circumstances in a particular way, and then evading the reciprocal obligations or liabilities that later arise from these same representations. Plaintiffs' equitable claims also invoke the focal concerns of equity with redressing fraud, protecting public policies, affording appropriate remedies as necessary to rectify wrongs and avert injustice, and enjoining continuing wrongdoing. Finally, the Heir's equitable claims assert the equitable doctrine that recognizes one corporation as the *de facto* alter ego of another, and that precludes the corporate form from being employed either to perpetrate fraud or frustrate federal policies.

4. A U.S. District Court judge already has validated the basis for the Heirs' claims to recover *Sunflowers*, including that Mendelssohn-Bartholdy forfeited his artworks as a consequence of Nazi policies and coercion. In *Schoeps v. Museum of Modern Art*, 594 F.Supp.2d 461, 466 (S.D.N.Y. 2009), U.S. District Judge Jed S. Rakoff affirmed the *bona fides* of the Heirs' claim to recover two other artworks that Mendelssohn-Bartholdy surrendered as a consequence of Nazi persecution under nearly identical facts by denying the defendant museums' motion for summary judgment and declaring that the evidence confirmed that Mendelssohn-Bartholdy would not have transferred any of his paintings but for Nazi policies and coercion:

> Claimants have adduced competent evidence that Paul never intended to transfer any of his paintings and that he was forced to transfer them only because of threats and economic pressures by the Nazi government. Summary judgment is therefore not appropriate.

A copy of this opinion is attached as **Exhibit 2**.

5. When Christie's auction house in London offered *Sunflowers* for sale in March 1987, Yasuda resolved to buy the Painting regardless of its price because *Sunflowers* presented Yasuda with a singular and non-recurring opportunity to burnish its corporate image with the unique luster of both the iconic Painting and its legendary artist. So committed, Yasuda recklessly – if not purposefully – ignored the provenance of *Sunflowers* that Christie's

published, which related that the famous Jewish Berlin banker and Nazi victim Paul von Mendelssohn-Bartholdy sold the Painting in Berlin in 1934 – at a time when notorious Nazi policies were targeting and dispossessing elite Jewish bankers and businessmen like Mendelssohn-Bartholdy and wreaking havoc upon Germany's Jewish population. Moreover, Christie's "Conditions of Business" for prospective buyers specifically states that all statements made by Christie's in the auction catalogue – including the provenance of the Painting – are "opinion" only, and that buyers "must satisfy themselves" as to all such matters (including provenance) before the date of the auction. Accordingly, Christie's thereby disclaimed that it was transferring good title to the Painting. (*See* "Conditions of Business" prescribing terms and conditions for "The Buyer," Christie's Auction Catalogue for March 30, 1987 London auction, attached as **Exhibit 3**.) Driven to buying *Sunflowers* regardless both of its cost and conspicuously problematic provenance, Yasuda paid a record hammer price of nearly $40 million dollars for the Painting. But Yasuda immediately acknowledged to a Christie's official that based upon the unprecedented international media attention and fanfare attending the auction, Yasuda realized in public relations value an amount four times greater, or approximately $160 million dollars.

6. In 2001, Yasuda confided to the Art Institute of Chicago (AIC) and the van Gogh Museum in Amsterdam that "Nazis confiscation problem may arise in America and in Holland" with regard to the exhibition of the Painting, and that it knew little more about the Painting than what

the Christies' auction provenance revealed. (**Exhibit 1**.) But despite extensive resources and art world expertise, Yasuda continued to avoid investigating the Painting for fear that it would confirm that systematic Nazi policies and coercion, in violation of the international law of human rights, compelled Mendelssohn-Bartholdy to surrender *Sunflowers* in 1934 Berlin. Instead – and upon information and belief – the Art Institute of Chicago, with Yasuda's knowledge and complicity, filed with the U.S. Department of State a false application under the Immunity from Judicial Seizure Act (22 U.S.C. § 2459), which failed to disclose the Painting's Nazi taint. This deception enabled Yasuda to import the Painting into the U.S. so that Yasuda could commercially exploit it at a major van Gogh exhibition that AIC was hosting in Chicago, with the assurance that U.S. law enforcement authorities would not seize the Painting as Nazi contraband. This misconduct violated federal statutes including the National Stolen Property Act, 18 U.S.C. § 2314 as well as the proscription against filing a false report with a federal agency, 18 U.S.C. § 1001.

7. Sompo Holdings and its corporate subsidiaries, including defendants Sompo Japan Insurance Inc., Sompo International and the Foundation (which Sompo Holdings collectively refers to as "One Sompo") have commingled the primary marketing and branding asset of Sompo Japan Insurance Inc. – the *Sunflowers* painting – and collectively have employed it fraudulently to reap billions of dollars of unjust enrichment through a sophisticated branding strategy based upon psychological images or archetypes. By knowingly exploiting a Nazi-tainted

painting in the U.S. for commercial gain, the defendants consciously have violated multiple U.S. domestic and foreign policies. These policies include seeking to resolve claims for Nazi- era artworks openly, honestly, fairly, and with access to all relevant documents and evidence, and without litigation if possible, as well as policies protecting the U.S. insurance market from commercial fraud, unfair competition and unfair or deceptive acts or practices in or affecting commerce, as provided by 15 U.S.C. § 45. Moreover, the conscious wrongdoing of Sompo Holdings and Sompo International concerning the Painting – which has enabled them to reap extensive unjust enrichment – also violates federal proscriptions such as mail fraud (18 U.S.C. § 1341) and wire fraud (18 U.S.C. § 1343) in that – upon information and belief – those companies employ both the U.S. mails and wires to operate in the U.S. and to further their fraudulent scheme concerning the Painting which targets prospective Illinois insurance consumers. Moreover, the Defendants' continuing wrongdoing also violates their affirmative duties under Illinois law to assist the Heirs in recovering *Sunflowers* and to refrain from commercially exploiting the Painting.

8. As a casualty of Nazi policies, the Painting implicates both signal U.S. foreign policies to identify artworks lost as a consequence of Nazi crimes and to return these artworks to their rightful owners based upon equitable principles grounded in fairness and justice, as well as the related ability of the U.S. Government to address war-related crimes through international diplomacy. The Supreme Court has made clear that when the subject matter of an equitable claim – such as

the claims of the Heirs to recover the Painting and for unjust enrichment – affects federal interests, courts assessing equitable relief consider relevant federal policies as well as how the conduct of the parties affects the public interest. *See, e.g., Precision Manufacturing Mfg. Co. v. Automotive Maintenance Machinery Co.,* 324 U.S. 806, 815 (1945). In sustaining or denying equitable claims under these circumstances, courts protect both established federal policy as well as the public interest. *Ibid.* Moreover, when important federal legislative policies and the public interest are at stake, Article III, Section 2 of the U.S. Constitution invests the federal judiciary with the broadest range of plenary equitable authority to achieve these objectives. These include the power in appropriate circumstances to impose constructive trusts upon property, as well as to compel conscious wrongdoers such as Sompo to disgorge or forfeit the unjust enrichment that they have reaped from their conscious wrongdoing. *See*, *e.g.*, *Kansas v. Nebraska*, 574 U.S. 445, 463 (2015). *See also* Owen W. Gallogly, *Equity's Constitutional Source,* 132 Yale L. J. 1213, 1312 (2023), observing that "the power exercised by federal courts in most equity cases is the inherent remedial authority conferred by Article III, so it is the extent of that power – not any authorized by statute – that delimits the permissible remedies available in federal court." (Emphasis and italics supplied.) Accordingly, the federal equitable claims of the Heirs to recover the Painting and for unjust enrichment are grounded necessarily upon the Court's plenary equitable authority under Article III, Section 2 of the U.S. Constitution to effectuate the federal foreign policy objectives of both Congress and the President to

resolve claims for the return of Nazi era artworks in a just, fair and equitable manner. And because both political branches that the Constitution entrusts with deciding and implementing U.S. foreign policy – Congress and the Executive have agreed emphatically upon these policies and their substantive content, these policies necessarily preempt, as a matter of U.S Constitutional law, any Illinois state law or remedy that obstructs or limits these policies in any way. So – and in the final analysis – the federal equitable remedies of the Heirs to recover the Painting and for unjust enrichment do not depend upon whether Illinois state law affords the Heirs effective judicial relief.

9. By expressly identifying the Sompo corporate image with *Sunflowers* so that the two have become, as Sompo Japan Insurance Inc. Celebrates, "synonymous" in the minds of its many stakeholders and members of the public – and by making *Sunflowers* an emblem of its collective corporate identity while proactively concealing the Painting's Nazi taint – the Sompo Defendants make clear that the Painting (and the Defendants' concomitant deceptions) necessarily play an integral role in defining their discrete brand and appealing to Illinois insurance consumers.

10. Importantly, the Sompo Defendants continue to violate U.S. foreign policy with impunity, in that fraudulently concealing the Painting's Nazi taint and concomitant conscious wrongdoing are – and always have been – essential to their ability to commercially exploit the Painting. These considerations crystalize the need for the Court to exercise its plenary equitable authority

both to vindicate overarching U.S. foreign policy and to redress the Defendant's unconscionable and continuing wrongdoing.

11. Finally, the "Sompo Group" – which includes Sompo Holdings and its subsidiaries, including the Defendants in particular – has made a mockery of its vaunted public commitments to behaving ethically, honestly, and transparently and consistent with corporate social responsibility and the protection of human rights as a basis for inviting the reliance and trust of its stakeholders, prospective customers, and the public.

B. German Inheritance Law

12. Paul von Mendelssohn-Bartholdy was married to Elsa von Mendelssohn-Bartholdy (hereinafter "Elsa") from 1927 until his death on May 10, 1935. At the time of his death, Mendelssohn-Bartholdy had four living sisters: Kathe Wach; Charlotte Hallin; Enole von Schwerin; and Marie Busch.

13. On February 8, 1935 – about three months before his death – Mendelssohn-Bartholdy and his non-Jewish wife, Elsa, executed a Contract of Inheritance (hereinafter the "COI"), which under German law is an alternative to a will. Under this contract, Paul gave Elsa a life estate in his property, with a reversionary interest to his four sisters or their heirs. In other

* * *