



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA, :  
 :  
 Plaintiff, :  
 :  
 : 99 Civ. 9940 (LAP)  
 :  
 -v.- :  
 :  
 *PORTRAIT OF WALLY,* :  
 A PAINTING BY EGON SCHIELE, :  
 :  
 Defendant *in Rem.* :  
-----X

**STIPULATION AND ORDER OF SETTLEMENT AND DISCONTINUANCE**

This Stipulation and Order of Settlement and Discontinuance (“this Stipulation”) is made and entered into as of this 19th day of July, 2010, by and among plaintiff, the United States of America (the “Government”), claimant Leopold Museum Privat-Stiftung (the “Foundation”) and claimant Estate of Lea Bondi Jaray (the “Estate”) (collectively, “the Parties”).

**RECITALS**

**WHEREAS**, the Government commenced a civil action in the United States District Court for the Southern District of New York, entitled *United States v. Portrait of Wally, a Painting by Egon Schiele*, No. 99 Civ. 9940 LAP (SDNY) (the “Action”), seeking civil forfeiture of a painting by Egon Schiele referred to as “Portrait of Wally” (the “Painting”);

**WHEREAS**, the Foundation and the Estate have asserted claims to the Painting in the Action;

**WHEREAS**, the Parties wish to resolve this matter without further litigation;

**NOW, THEREFORE**, in consideration of the above recitals, and the mutual promises and covenants set forth herein, the Parties stipulate and agree as follows:

1. Consideration Paid. Within two (2) business days after the execution of this Stipulation by the Parties and receipt of a true copy signed by all parties, the Foundation shall transfer by wire nineteen million U.S. dollars (US \$19,000,000) (the “Settlement Sum”) to the U.S. Treasury Suspense Account, in accordance with written instructions agreed upon by all Parties.

2. Loan Contract. Within two (2) business days after the execution of this Stipulation by the Parties, and after approval in writing by the Government and the Estate, which approval shall not be unreasonably withheld, the Foundation will enter into a loan contract (the “Loan Contract”) with the Museum of Jewish Heritage in New York (the “Exhibiting Museum”) for the temporary display of the Painting for a period of three (3) weeks (the “Exhibition”), as described further in paragraph 5, below.

3. Termination of Action. Promptly following the execution of this Stipulation, the Parties shall submit to the United States District Court for the Southern District of New York this fully executed Stipulation to be endorsed and “So Ordered” by the Court. Upon such endorsement and its entry on the docket, the Action is hereby dismissed with prejudice, without costs and/or attorney’s fees to any Party.

4. Transfer and Delivery of the Painting. Within two (2) business days of (i) the execution of the Loan Contract and the notification to the Government and the Estate thereof or (ii) notification from the United States District Court for the Southern District of New York that the Action has been dismissed, whichever occurs later, and after delivery of the Settlement Sum to the U.S. Treasury Suspense Account, the Government will notify the Foundation in writing (and provide a copy to the Estate) that the Painting is available for pick-up from the warehouse at which it is currently being stored by U.S. Immigration and Customs Enforcement (“ICE”) (the “Government Notification”). The Government Notification shall specify the address of such warehouse. The Government, the Foundation and the Estate will agree in writing on the exact date and time for the Painting’s transfer (the “Transfer Date and Time”), and the Foundation and the Estate will provide the Government in writing with the names of its respective representatives who will be present at the transfer. At the Transfer Date and Time, (an) agent(s) of ICE shall deliver possession of the Painting to a representative of the Foundation, who shall inspect the painting to confirm its identity and condition and upon such confirmation sign a receipt (in the form attached hereto as Exhibit A) evidencing the Foundation’s receipt of the Painting (the “Receipt”). Upon such transfer of possession of the Painting, the Foundation shall have possession, full and uncontroverted title and full liability and responsibility for the Painting.

5. Museum Exhibition of the Painting. Immediately following the transfer of the Painting to the Foundation, as provided in paragraph 4, above, the Foundation shall cause the Painting to be en route to the Exhibiting Museum for the purposes of the loan of the Painting to the Exhibiting Museum pursuant to the terms of the Loan Contract referenced in paragraph 2, above. The Foundation shall not export the Painting from the United States at any time before the Exhibition begins and may do so only after the Exhibition has ended. All Parties shall

expend their best efforts to arrange for the Exhibition to commence as soon as is reasonably feasible after the Foundation receives possession of the Painting. The Parties agree, and the Loan Contract shall also provide, that (a) a ceremony will be held in connection with the opening of the Exhibition, to commemorate the legacy of Lea Bondi Jaray and the successful resolution for all Parties of the Action; (b) the following statement shall be prominently displayed next to the Painting at the Exhibition; (c) no Party, counsel or other person in privity with a Party or the Exhibiting Museum will provide any other written reference to the provenance of the Painting in any form at, or in connection with, the Exhibition.

This Painting (“Portrait of Wally” by Egon Schiele) was the personal property of Lea Bondi Jaray, a Jewish art dealer in Vienna, who fled in 1939 to London, where she died in 1969. The Painting subsequently became the subject of court proceedings in New York City from 1998 to 2010, after it was loaned in 1997 to the Museum of Modern Art in New York (MoMA) by the Leopold Museum as part of an exhibition of Schieles from the Leopold Museum’s collection. In 1999, the United States Government commenced a civil forfeiture action in New York, alleging that the Painting was stolen from Lea Bondi Jaray during the Nazi era by a Nazi named Friedrich Welz, and was imported into the United States in 1997 by the Leopold Museum in violation of U.S. law. The Estate of Lea Bondi Jaray asserted a claim to the Painting in the action, and the U.S. Government agreed that upon forfeiture of the Painting, it would transfer to the Estate all right and title to the Painting. Based on the evidence presented during the case, the United States District Court in New York concluded in 2009 that the Painting was the personal property of Lea Bondi Jaray and that it was stolen from her in Vienna in the late 1930’s by Friedrich Welz, who was a member and collaborator of the Nazi party. The Court found that the Painting had been seized from Welz by the U.S. Forces in Austria after the War and delivered in 1947 to the Austrian Federal Office for the Preservation of Historical Monuments (the “Bundesdenkmalamt”), along with paintings Welz had acquired from Dr. Heinrich Rieger, a Jewish art collector who had perished during the Holocaust. In 1950, the Bundesdenkmalamt delivered artworks to an agent for the Rieger heirs and included the Painting in the delivery. Later that year, the Rieger heirs sold their works to the Austrian National Gallery (the “Belvedere”), and the Painting was included in the delivery of the artworks to the Belvedere. In 1954, the Belvedere traded the Painting to Dr. Rudolf Leopold. In 1994, Dr. Leopold transferred the Painting to the Leopold Museum. Following the Court’s findings on these issues, the case was finally resolved in 2010 by the U.S. Government, the Estate and the Leopold Museum. The Leopold Museum agreed to pay the Estate a substantial sum and, in return, the Estate agreed to release its claim to the Painting and the

Government agreed to dismiss the civil forfeiture action and release the Painting to the Leopold Museum. The three parties also agreed that the Painting was to be loaned by the Leopold Museum to this museum for this exhibition.

6. Payment to the Estate and Estate Payment of Storage Fees. Within two (2) business days after the close of the Exhibition, the Foundation shall certify in writing to the Government and the Estate that the Painting has been packed, shipped and is en route to Austria or that the Painting will not be transported to Austria for reasons other than an Export Restriction, defined below (the "Certification"). Upon receipt of the Certification, the Government shall direct the Treasury Executive Office for Asset Forfeiture to immediately release the Settlement Sum, less total storage costs for the Painting in the amount of [\$50,808.97], to an account held by Herrick, Feinstein LLP, as attorneys for the Estate ("HF"), in accordance with written instructions to be provided to the Government by the Estate; *provided, however, that* the Settlement Sum will not be paid or released to the Estate if the transport of the Painting to Austria is delayed as a result of a seizure, subpoena, attachment, or official act or proceeding of any kind, whether civil, criminal, federal, state, local or otherwise, preventing, hindering, limiting or conditioning such shipment of the Painting to the Foundation in Vienna (an "Export Restriction"), in which case the Estate shall be paid only once the Export Restriction is finally and conclusively eliminated and resolved in favor of the Foundation and the Certification is received; and provided further, that if such an Export Restriction is not thus eliminated and resolved within two (2) months, the Settlement Sum shall be credited back and transmitted immediately by the Treasury Executive Office for Asset Forfeiture to the account in Vienna designated by the Foundation, but the Settlement Sum shall again be transferred to the U.S. Treasury Suspense Account referenced in paragraph 1 above, immediately after any and all Export Restrictions are thus eliminated and resolved, and the Painting shall be and remain in the

exclusive jurisdiction of this Court for purposes of this clause, requiring the Foundation to comply with this requirement and only thereafter to give the Certification required above, under penalty of contempt. Notwithstanding the foregoing, any Export Restriction with regard to the Painting is prohibited by this Stipulation and New York Arts and Cultural Affairs Law, Section 12.03. Upon the Government's release of the Settlement Sum to the aforementioned account held by HF, the United States shall have clear title to the Storage Fees, the Storage Fees shall be forfeited to the United States for disposition according to law, and the United States Customs and Border Protection ("CBP") or its designee may dispose of the Storage Fees according to law.

7. Permanent Exhibition Signage. The Foundation shall prominently display the following statement, in both English and German ("the Permanent Signage Statement"), next to the Painting at every future display of the Painting of any kind that the Foundation authorizes or allows, whether physically located at the Leopold Museum in Vienna or elsewhere, anywhere in the world:

This Painting ("Portrait of Wally" by Egon Schiele) was the personal property of Lea Bondi Jaray, a Jewish art dealer in Vienna, who fled in 1939 to London, where she died in 1969. The Painting subsequently became the subject of court proceedings in New York City from 1998 to 2010, after it was loaned in 1997 to the Museum of Modern Art in New York (MoMA) by the Leopold Museum as part of an exhibition of Schieles from the Leopold Museum's collection. In 1999, the United States Government commenced a civil forfeiture action in New York, alleging that the Painting was stolen from Lea Bondi Jaray during the Nazi era by a Nazi named Friedrich Welz, and was imported into the United States in 1997 by the Leopold Museum in violation of U.S. law. The Estate of Lea Bondi Jaray asserted a claim to the Painting in the action, and the U.S. Government agreed that upon forfeiture of the Painting, it would transfer to the Estate all right and title to the Painting. Based on the evidence presented during the case, the United States District Court in New York concluded in 2009 that the Painting was the personal property of Lea Bondi Jaray and that it was stolen from her in Vienna in the late 1930's by Friedrich Welz, who was a member and collaborator of the Nazi party. The Court found that the Painting had been seized from Welz by the U.S. Forces in Austria after the War and delivered in 1947 to the Austrian Federal Office for the Preservation of Historical Monuments (the "Bundesdenkmalamt"),

along with paintings Welz had acquired from Dr. Heinrich Rieger, a Jewish art collector who had perished during the Holocaust. In 1950, the Bundesdenkmalamt delivered artworks to an agent for the Rieger heirs and included the Painting in the delivery. Later that year, the Rieger heirs sold their works to the Austrian National Gallery (the "Belvedere"), and the Painting was included in the delivery of artworks to the Belvedere. In 1954, the Belvedere traded the Painting to Dr. Rudolf Leopold. In 1994, Dr. Leopold transferred the Painting to the Leopold Museum. Following the Court's findings on these issues, the case was finally resolved in 2010 by the U.S. Government, the Estate and the Leopold Museum. The Leopold Museum agreed to pay the Estate a substantial sum and, in return, the Estate agreed to release its claim to the Painting and the Government agreed to dismiss the civil forfeiture action and release the Painting to the Leopold Museum.

Dieses Gemälde („Bildnis Wally“ von Egon Schiele) war persönliches Eigentum von Lea Bondi Jaray, einer jüdischen Kunsthändlerin in Wien, die 1939 nach London floh, wo sie 1969 verstarb. Das Gemälde wurde 1998-2010 Gegenstand eines Gerichtsverfahrens in New York City, nachdem es das Leopold Museum 1997 als Teil einer Ausstellung von Schieles Werken aus der Sammlung des Leopold Museums dem Museum of Modern Art in New York (MoMA) geliehen hatte. Die Regierung der Vereinigten Staaten von Amerika strengte 1999 eine zivilrechtliche Einziehungsklage in New York an und behauptete, dass das Gemälde seinerzeit während der nationalsozialistischen Zeit von einem Nazi namens Friedrich Welz von Lea Bondi Jaray gestohlen und 1997 unter Verletzung von US-Recht vom Leopold Museum eingeführt worden sei. Der Nachlass von Lea Bondi Jaray machte im Rahmen des Verfahrens einen Anspruch auf das Gemälde geltend; und die US-Regierung erklärte sich damit einverstanden, dass man nach Einziehung des Gemäldes alle Eigentumsrechte hieran an den Nachlass übertragen werde. Auf Grundlage des Beweismaterials, das im Rahmen dieser Sache vorgelegt wurde, kam die Lokalabteilung des Bundesgerichts (United States District Court) in New York 2009 zu dem Schluss, dass das Gemälde persönliches Eigentum von Lea Bondi Jaray sei und dass Friedrich Welz, der ein Mitglied und Kollaborateur der Nazi-Partei gewesen war, sich das Werk im Wien der späten 1930er Jahre widerrechtlich angeeignet habe. Das Gericht stellte fest, dass das Gemälde nach dem Krieg von Welz durch die US-Streitkräfte in Österreich konfisziert und 1947 zusammen mit anderen Gemälden, die Welz von Dr. Heinrich Rieger erhalten hatte, einem jüdischen Kunstsammler, der dem Holocaust seinerzeit zum Opfer gefallen war, an das österreichische Bundesdenkmalamt (BDA) übergeben worden war. 1950 übergab das Bundesdenkmalamt Kunstwerke an einen Vertreter der Rieger-Erben, so auch das besagte Gemälde. Im späteren Verlauf des Jahres verkauften die Rieger-Erben ihre Werke an die Österreichische Galerie ("Belvedere"), wobei das Gemälde Teil des Lieferumfangs war. 1954 kam ein Geschäft zwischen dem Belvedere und Dr. Rudolf Leopold zustande, bei dem Dr. Rudolf Leopold das Gemälde erwarb. 1994 überließ Dr. Leopold das Gemälde dem Leopold Museum. Im Anschluss an die gerichtliche Feststellung dieser Streitpunkte, wurde die Sache 2010 von der US-Regierung, dem Nachlass und dem Leopold Museum endgültig beigelegt. Das

Leopold Museum erklärte sich bereit, dem Nachlass einen erheblichen Betrag zu bezahlen; im Gegenzug ist der Nachlass dazu verpflichtet, den Besitzanspruch auf das Gemälde zugunsten des Leopold Museums aufzugeben. Die US-Regierung verpflichtete sich, die Einziehungsklage abzuweisen und das Gemälde an das Leopold Museum freizugeben.

All future public or published written references to the Painting and reproductions of the Painting by or on behalf of the Foundation, or authorized or allowed by or through the Foundation, including, without limitation, all signage, catalogue entries, display labels, narratives, video and all other media, shall not contain any language that is inconsistent with the contents of the Permanent Signage Statement.

8. Representations and Warranties of the Parties. Each of the Parties separately represents and warrants that it has the requisite power and authority to enter into this binding Stipulation and has obtained the necessary approvals and consents, whether governmental or otherwise, to perform the obligations contemplated by this Stipulation. In addition, each of the particular individuals signing below on behalf of a Party represents and warrants that he or she has the requisite power and authority to sign on that Party's behalf. The Estate further represents and warrants that the August 30, 2000 Decree Granting Ancillary Letters of Administration to Andre Bondi, entered by the Surrogate's Court of New York County in Matter No. 3223-00, is and remains in full force and effect at the time that he signs this Stipulation.

9. Releases. In consideration of the promises and covenants referenced herein, the Parties hereby agree to the following releases, effective upon the dismissal of the Action, as provided herein:

a. Release by the Foundation. The Foundation, on behalf of itself and its past, present and future predecessors, successors, assigns, affiliates, subsidiaries,

divisions, parents and related entities, heirs, agents, executors, administrators, employees, officers, directors, shareholders, partners, trustees, owners, advisors, receivers, indemnitors, indemnities, attorneys, insurers, transferees and representatives (including, but not limited to all present, past and future Vorstandsmitglieder) of any kind whatsoever (the "Foundation Releasers"), irrevocably and unconditionally releases, settles, relinquishes, remises, acquits and fully, finally and forever discharges the Government (including, without limitation, the United States Attorney's Office for the Southern District of New York ("USAO"), ICE, CBP, the Department of Homeland Security ("DHS"), the United States Customs Service, and the Department of Treasury) and the Estate, together with their past, present and future predecessors, successors, assigns, affiliates, subsidiaries, divisions, parents and related entities, heirs, agents, executors, administrators, employees, officers, directors, shareholders, partners, trustees, owners, advisors, receivers, indemnitors, indemnities, attorneys, insurers, transferees and representatives of any kind whatsoever (the "Government and Estate Releasees"), of and from any and all claims, demands, damages, actions, causes of action, debts, costs, expenses, compensation, liabilities, controversies or agreements of any kind whatsoever, arising out of, relating to or in any way connected with any action or inaction that has occurred prior to or upon the date hereof, which the Foundation Releasers ever had, now has or hereafter can, shall or may have against or concerning the Government and the Estate Releasees, arising out of, resulting from, or in any way connected with the Painting or the matters or events alleged in the Action. It is understood and agreed that this is a full and final release made to fully and finally compromise any and all claims which were or could ever be asserted by the Foundation Releasers against the

Government and the Estate Releasees concerning the Painting or the matters or events alleged in the Action; *provided however*, that this release does not apply and is without prejudice to any claim the Foundation may have against the Government and the Estate for a breach of this Stipulation. Nothing in this release shall in any way release, discharge or relieve the Government or the Estate from any of its obligations under this Stipulation.

b. Release by the Estate. The Estate, on behalf of itself and its past, present and future predecessors, successors, assigns, affiliates, subsidiaries, divisions, parents and related entities, heirs, agents, executors, administrators, employees, officers, directors, shareholders, partners, trustees, owners, advisors, receivers, indemnitors, indemnities, attorneys, insurers, transferees and representatives of any kind whatsoever (the "Estate Releasees"), irrevocably and unconditionally releases, settles, relinquishes, remises, acquits and fully, finally and forever discharges the Government (including, without limitation, the USAO, ICE, CBP, DHS, the United States Customs Service, and the Department of Treasury) and the Foundation, together with their past, present and future predecessors, successors, assigns, affiliates, subsidiaries, divisions, parents and related entities, heirs, agents, executors, administrators, employees, officers (including, but not limited to all present, past and future Vorstandsmitglieder), directors, shareholders, partners, trustees, owners, advisors, receivers, indemnitors, indemnities, attorneys, insurers, transferees and representatives of any kind whatsoever (the "Government and Foundation Releasees"), of and from any and all claims, demands, damages, actions, causes of action, debts, costs, expenses, compensation, liabilities, controversies or agreements of any kind whatsoever, arising out of, relating to or in any way connected with any action or inaction that has occurred prior to or upon the date hereof, which the

Estate Releasors ever had, now have or hereafter can, shall or may have against the Government and Foundation Releasees, arising out of, resulting from, or in any way connected with the Painting or the matters or events alleged in the Action. It is understood and agreed that this is a full and final release made to fully and finally compromise any and all claims which were or could ever be asserted by the Estate Releasors against the Government and the Foundation Releasees concerning the Painting or the matters or events alleged in the Action; *provided however*, that this release does not apply and is without prejudice to any claim the Estate may have against the Foundation for a breach of this Stipulation. Nothing in this release shall in any way release, discharge or relieve the Foundation from any of its obligations under this Stipulation.

c. Bar of Future Claims by the Foundation or the Estate against the Government. The Foundation and the Estate are barred from asserting any claim against the Government (including, without limitation, the USAO, ICE, CBP, DHS, the United States Customs Service, and the Department of Treasury) and any of its respective officers, agents and employees worldwide, in their official and individual capacities, in connection with or arising out of the seizure or restraint, or disposition of the Painting or the commencement or prosecution of the Action, including, without limitation, any claim that the Government did not have probable cause to seize the Painting, that the Foundation or the Estate is a prevailing party or that the Foundation or the Estate is entitled to attorney's fees or any award of interest. Furthermore, in consideration for the release of the Painting, the Foundation and the Estate further agree to release and forever discharge the Government (including, without limitation, the USAO, ICE, CBP, DHS,

the United States Customs Service and the Department of Treasury), and any of its officers, agents, servants, and employees, their heirs, successors, or assigns from any and all action, suits, proceedings, debts, dues, contracts, judgments, damages, claims, and /or demands whatsoever in law or equity which any claimants, heirs, successors, or assigns ever had, now have, or may have in the future in connection in connection with the detention, seizure, release, or any other action or inaction of or regarding the Painting. The Foundation further agrees to hold and save the Government (including, without limitation, the USAO, ICE, CBP, DHS, the United States Customs Service and the Department of the Treasury), and their officers, agents, servants and employees, their heirs successors or assigns, harmless from any claims by any others, including costs and expenses for or on account of any and all lawsuits or claims of any character whatsoever in connection with the detention, seizure, release, or any other action or inaction of or regarding the Painting.

10. Governing Law; Dispute Resolution. This Stipulation, and the validity, performance, construction and enforceability thereof, shall be governed and construed in accordance with the laws of the State of New York, without regard to its choice-of-law rules. The United States District Court for the Southern District of New York shall retain exclusive jurisdiction and shall be the exclusive venue for the resolution of any dispute arising under, and concerning the interpretation and enforcement of, this Stipulation. The Foundation expressly consents to the jurisdiction of the United States District Court for the Southern District of New York for purposes of this paragraph, and waives any and all rights, privileges and immunities it may have under the Foreign Sovereign Immunities Act of 1976, 28 U.S.C. §1602, et seq. (the “FSIA”), including any claim that it is immune from such jurisdiction under the FSIA.

11. Cure: No Party shall be deemed in breach of its obligations under this Stipulation unless it fails to cure such breach within three (3) business days after receipt of written notice of such breach.

12. Successors. The Parties agree that this Stipulation shall be binding upon and inure to the benefit of the Parties and each of their successors, heirs and assigns.

13. Cooperation. The Parties agree to execute any and all documents and to do and perform any and all acts reasonably necessary or proper to effectuate the terms and provisions of this Stipulation.

14. Headings. The headings used in this Stipulation are for convenience only, are not part of this Stipulation, and will not alter or determine any rights or obligations under this Stipulation.

15. Counterparts. This Stipulation may be signed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. An electronically transmitted counterpart of this Stipulation shall constitute an original for all purposes.

16. Execution and Delivery Required. This Stipulation shall not constitute a binding Stipulation unless and until it has been executed and delivered by all of the Parties.

17. Mutual Drafting. This Stipulation represents a bargained-for Stipulation resulting from the negotiation of the Parties. This Stipulation shall be deemed as joint work product of all Parties and their respective counsel, and all Parties shall be considered the drafters of this Stipulation. It is agreed to and understood that the general rule that ambiguities are to be

construed against the drafting party shall not apply to this Stipulation. By their authorized signatures below, the Parties certify that they have carefully read and fully considered the terms of this Stipulation, that they have had an opportunity to discuss these terms with attorneys or advisors of their own choosing, that they agree to all of the terms of this Stipulation, that they intend to be bound by them and to fulfill the promises set forth herein, and that they voluntarily and knowingly enter into this Stipulation with full understanding of its binding legal consequences.

18. Severability. Whenever possible, each provision and term of this Stipulation shall be interpreted in such a manner as to be valid and enforceable. In the event that any provision or term should be determined to be or rendered invalid or unenforceable, all other provisions and terms of this Stipulation shall remain valid and enforceable so long as the Parties' intentions in this Stipulation may thereby be effectuated.

19. Entire Stipulation. This Stipulation contains the entire Stipulation and understanding among the Parties pertaining to the subject of this Stipulation and supersedes and replaces all prior and contemporaneous negotiations, stipulations and agreements, and proposed stipulations and agreements, written or oral. Each of the Parties hereto acknowledges that no Party, nor any agent or attorney of any Party, has made any promise, representation or warranty whatsoever, expressed or implied, not expressly contained in this Stipulation concerning this settlement, to induce that Party to execute this Stipulation.

20. No Waiver or Modification. No waiver, amendment or modification of this Stipulation shall be valid unless in writing and signed by each of the Parties. The Parties shall promptly notify the Court of any modification or amendment to this Stipulation.

21. Notice. Any notice, demand, approval, consent, or other communication required or desired to be given under this Stipulation in writing shall be directed to the Party involved at the address indicated below and shall be delivered by electronic mail or Federal Express or similar overnight delivery service to the following persons:

FOUNDATION

Leopold Museum-Privatstiftung  
Museumsplatz 1  
A-1070 Wien  
Austria  
Attn: Mag. Peter Weinhaeupl  
Fax: 011-49 1 525 70 1500  
Email: Weinhaeupl@leopoldmuseum.org

With a copy to:

Smith, Gambrell & Russell, LLP  
250 Park Avenue, Suite 1900  
New York, New York 10177  
Attn: William M. Barron, Esq.  
Fax: (212) 907-9815  
Email: WBarron@sgrlaw.com

ESTATE

The Estate of Lea Bondi Jaray  
c/o Herrick, Feinstein LLP  
2 Park Avenue  
New York, New York 10016  
Attn: Howard N. Spiegler, Esq.  
Fax: (212) 545-3392  
Email: hspiegler@herrick.com

GOVERNMENT

United States Department of Justice  
U.S. Attorney's Office, Southern District of New York  
Asset Forfeiture Unit  
One St. Andrew's Plaza  
New York, New York 10007  
Attn: AUSA Sharon Cohen Levin, Esq.  
Fax: (212) 637-0421  
Email: [sharon.levin@usdoj.gov](mailto:sharon.levin@usdoj.gov)

Any Party may, from time to time, change its address(es) for notice hereunder by giving the other Parties written notice of such change.

March 2012

*Reference:* Raphael Contel, Giulia Soldan, Alessandro Chechi, "Case Portrait of Wally – United States and Estate of Lea Bondi and Leopold Museum," Platform ArThemis (<http://unige.ch/art-adr>), Art-Law Centre, University of Geneva.

## Case Portrait of Wally – United States and Estate of Lea Bondi and Leopold Museum

*United States/États-Unis – Estate of Lea Bondi – Leopold Museum – Artwork/oeuvre d’art – Nazi looted art/spoliations nazies – Judicial claim/action en justice – Settlement agreement/accord transactionnel – Anti-seizure legislation/garantie de restitution – Criminal offence/infraction pénale – Financial compensation/indemnisation – Symbolic gesture/geste symbolique – Loan/prêt*

*After having been taken from Lea Bondi, a Jew forced to flee Austria following the Anschluss, the painting “Portrait of Wally” by Egon Schiele was seized by the US Forces at the end of the war. The portrait was first returned by the US Restitution Division to the Austrian Federal Office for Preservation of Historical Monument (BDA). Portrait of Wally was then returned by the BDA to another Jewish family, which owned a number of Schiele’s paintings, who sold it to the Oesterreichische Galerie Belvedere. Finally, Portrait of Wally was acquired by the art collector Rudolph Leopold. In 1994, he sold his collection, including Portrait of Wally, to the Leopold Museum. The painting was loaned and exposed at the New York MoMA from 1997 to 1998. After the end of the exhibition, the heirs of Mrs Bondi brought a suit against the Leopold Museum and the painting was seized. On July 2010, an agreement was reached between the heirs, the U.S. Government and the Leopold Museum.*

*I. Chronology; II. Dispute Resolution Process; III. Legal Issues; IV. Adopted Solution; V. Comment; VI. Sources.*

ART-LAW CENTRE – UNIVERSITY OF GENEVA

PLATFORM ARTHEMIS  
[art-adr@unige.ch](mailto:art-adr@unige.ch) - <http://unige.ch/art-adr>  
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## I. Chronology<sup>1</sup>

### Nazi looted art

- **1925:** Mrs Bondi, an Austrian Jew, owner of an art gallery in Vienna, acquired the painting “Portrait of Wally” by Egon Schiele for herself.
- **1938:** German troops occupied Austria and annexed it to Nazi Germany (*Anschluss*). Mrs Bondi’s gallery was declared “non-aryan” and subject to confiscation.
- **1938, around March 13:** Mrs Bondi sold the art gallery to Mr Welz for 13.500.- Reichmark. Mr Welz was a member of the National Socialist German Workers. He decided to aryanize the art gallery. The transfer of “Portrait of Wally” to Mr Welz is unclear. Mrs Bondi and her husband migrated to England.
- **1939 or 1940:** Mr Welz acquired a number of Schiele’s paintings and drawings from Dr Rieger, a collector and Austrian Jew. Dr Rieger and his wife died in the Theresienstadt concentration camp (1942).
- **May 1945:** United States Forces occupied Austria. They arrested Mr Welz and seized his property, including “Portrait of Wally”.
- **May 1947:** Dr Rieger’s son engaged attorneys to recover the property taken by the Nazi. His attorney wrote to the Reparations, Deliveries and Restitution Division (RDR) of the United States. The letter did not contain any reference to the painting “Portrait of Wally”.
- **December 1947:** The RDR released fourteen paintings the United States Forces had seized to the Bundesdenkmal, the Austrian Federal Office for the Preservation of Historical Monuments (BDA). “Portrait of Wally” was one of the paintings delivered by the RDR.
- **May 1950:** The BDA delivered several paintings, including “Portrait of Wally”, to the Rieger heirs.
- **Late 1950:** The Rieger heirs negotiated the sale of artworks from Rieger’s collection to the Österreichische Galerie Belvedere (Belvedere). The Austrian Federal Ministry of Education approved the purchase of eleven paintings, including three Schiele’s works. Although not explicitly referenced in either the Ministry of Education approval or the agreement, “Portrait of Wally” was included in the transaction.
- **1953:** An art collector, Dr Leopold, visited Mrs Bondi in London. He acquired several paintings from her. In the course of this transaction, Mrs Bondi asked Dr Leopold where “Portrait of Wally” was. Dr Leopold answered that the painting was at the Belvedere.
- **September 1954:** Dr Leopold acquired “Portrait of Wally”. He did not ask the Belvedere for any documentation showing that “Portrait of Wally” had been returned to the Rieger heirs.
- **1969:** Mrs Bondi died. She never filed a formal lawsuit to obtain the restitution of “Portrait of Wally”.
- **August 1994:** Dr Leopold sold his collection to the newly established Museum (Leopold Museum) and became the Museum’s “Museological Director” for life.
- **1995:** The Leopold Museum prepared a catalogue for three expositions. The provenance note on “Portrait of Wally”, authored by Dr Leopold himself, was as follows: “Emil

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<sup>1</sup> The chronology is a summary of the background made by the Court of New York in *United States of America v. Portrait of Wally, a painting by Egon Schiele, Defendant in Rem*, 663 F. Supp. 2d 232 (S.D.N.Y. 2009).

Toepfer, Wien; Richard Lanyi, Wien; Lea Bondi Jaray, Wien später London; Österreichische Galerie, Wien; Rudolf Leopold, Wien.”

- **1997:** The Museum loaned and shipped part of its Schiele collection, including “Portrait of Wally”, to the New York’s Museum of Modern Art (MoMA).
- **1997-1998:** The MoMA exhibited “Portrait of Wally”.
- **1998:** Three days after the end of the exhibition, the District Attorney of New York County issued a subpoena for the painting after Mrs Bondi heirs filed a claim alleging that the painting was stolen in 1938. The subpoena was quashed by the New York Court of Appeals on September 21 (violation of Section 12.03 of New York’s Arts and Cultural Affairs Law which protect artwork on loan to museums in New York from seizure in both criminal and civil actions). **The next day**, United States Magistrate Judge James C. Francis issued a seizure warrant for the painting. The U.S. Customs Service seized the painting under the National Stolen Property Act (NSPA) on the ground that it was stolen property and unlawfully imported into the United States.
- **20 July 2010:** After years of inconclusive litigation, the Estate of Lea Bondi Jaray announced the settlement of the case with the U.S. Government and the Leopold Museum by an unprecedented agreement.

## II. Dispute Resolution Process

### Judicial claim – Settlement agreement

- Mrs Bondi never filed a formal claim for recovery of “Portrait of Wally”. She thought that it would have been extremely difficult to recover her painting before an Austrian judge and against an Austrian citizen (Dr Leopold)<sup>2</sup> and she probably also lacked the needed financial resources.<sup>3</sup> Nevertheless, the attempts that Mrs Bondi made to negotiate over “Portrait of Wally” suggest that she considered the painting as part of her property. In particular, she asked Dr Leopold (before he bought himself the painting) to introduce her and/or speak about “Portrait of Wally” with the Belvedere. She also sought help from Otto Keller, an American art dealer.
- At the end of 1997, a New Yorker journalist, Mrs Judith H. Dobrzynski, published an article in the New York Times<sup>4</sup> about Dr Leopold, described as a (too) zealous collector. Furthermore, she pointed out a few paintings from the Leopold Museum exposed by the MoMA as of doubtful provenance. In particular, she stressed out that “Portrait of Wally” was probably taken from Mrs Bondi during the *Anschluss* and that Dr Leopold probably knew that the painting was looted. It seems that the article encouraged both the heirs of Mrs Bondi and the authorities to proceed to recover “Portrait of Wally”.

<sup>2</sup> *United States of America v. Portrait of Wally, a painting by Egon Schiele, Defendant in Rem*, 663 F. Supp. 2d 232 (S.D.N.Y. 2009).

<sup>3</sup> Judith Dobrzynski, “The Zealous Collector: A Singular Passion for Amassing Art, One Way or Another,” *The New York Times*, December 24, 1997, accessed August 15, 2011, <http://www.judithdobrzynski.com/3016/the-zealous-collector>.

<sup>4</sup> *Ibid.*

- Following the end of the Schiele exhibition at the MOMA which included “Portrait of Wally”, the heirs of Mrs Bondi filed a legal claim for its recovery.
- Therefore the painting was seized by the District Attorney of New York County. However, the Courts of New York decided that a loaned artwork could not be seized, either in civil or criminal procedure, because it was protected under New York’s Arts and Cultural Affairs Law.
- The day after, the New York Court of Appeal ruled in favour of the Leopold Museum and the MoMA. Subsequently, the Federal Government of the United States stepped in. The painting was seized by the U.S. Customs Service and twelve years of proceedings started in order to determine whether the Leopold Museum violated the NSPA by importing “Portrait of Wally” in the United States.
- Just before going to trial to determine whether or not Dr Leopold, acting as an agent for the Leopold Museum, knew that the painting was stolen when he brought it into the United States, the parties agreed to settle out of court.

### III. Legal Issues

#### Anti-seizure legislation – Criminal offence

- The Case regarding “Portrait of Wally”, “changed the world” by showing that an artwork loaned to the MoMA could be seized by the authorities.<sup>5</sup>
- More precisely, the instant case demonstrated that, whereas a loaned artwork **could not be seized** under New York Law (anti-seizure legislation prohibited the seizure of artworks, even in criminal cases), it **could be seized** by the U.S. Customs Service if the NSPA (federal rules) had been violated. This means that a **looted artwork** could be considered as **stolen** under the NSPA. Therefore, if the artwork is imported in the United States by someone who knows that it was stolen, it cannot be exported by this person anymore.
- Some States offer statutory protection to loaned artwork. Anti-seizure statutes are legal instruments that facilitate the lending of artworks for temporary exhibition by guaranteeing that they cannot be seized by the courts of the borrowing State. Hence, the purpose of such statutes is to overcome the reluctance of museums and similar institutions to loan their artworks to foreign jurisdiction where they might be subject to some form of judicial seizure. In Switzerland, the “Cultural Property Transfer Act/Loi fédérale suisse sur le transfert illicite des biens culturels” (CPTA/LTBC) implements a “guarantee of restitution”. The CPTA is a federal rule and cannot be overruled. But experts believe that the guarantee apply only in case of civil procedure.
- The principal issue at stake before the U.S. Court was whether the NSPA had been violated. A NSPA violation consists of three elements: “(1) the transportation in interstate of foreign commerce of property, (2) valued at \$ 5.000. - or more and (3) with the knowledge that the property was stolen, converted, or taken by fraud”.<sup>6</sup> In particular, the Court had to find out if

<sup>5</sup> Howard Spiegler, “What the Lady Has Wrought: The Ramifications of the Portrait of Wally Case,” *The Art Law Newsletter of Herrick, Feinstein LLP*, 7 (2010): 4.

<sup>6</sup> *United States of America v. Portrait of Wally, a painting by Egon Schiele, Defendant in Rem*, 663 F. Supp. 2d 232 (S.D.N.Y. 2009).

- the painting could be considered as stolen and if the Museum imported “Portrait of Wally” knowing that it was stolen.
- The District Court decided that “Portrait of Wally” **was stolen** (spoliation) by Mr Welz and **remained stolen** at the time the painting was imported in the United States<sup>7</sup>. Moreover, the court stated that the United States have an interest in “enforcing its own laws as applied to conduct on its own soil” in pursuit of its “policy to prohibit knowing transportation of stolen or converted goods into the United States”.<sup>8</sup>
  - The Court was convinced by the arguments of the U.S. Government: “Portrait of Wally” was not part of the Würthle Gallery owned by Mrs Bondi but a private property and was wrongfully taken by Mr Welz. Indeed, “Portrait of Wally”, as a private property, had no connection with the Aryanization of the Gallery. The U.S. Government affirmed that it is an “undisputed fact that Welz was a Nazi and Bondi, as a Jew hoping to escape the unspeakable fate of so many, who died in the Holocaust, could not refuse to comply with his wishes”.<sup>9</sup> Therefore, Mrs Bondi surrendered the painting because she was afraid Mr Welz would prevent her from leaving the country.
  - The Museum tried to prove that the Belvedere and/or Dr Leopold acquired title to the painting under Austrian law. However, the Court decided that the Belvedere had not acquired title by prescriptive possession under Austrian law. One of the reasons is that no evidence indicated that the Museum conducted any type of follow-up investigation. The Court also decided that Dr Leopold had not obtained ownership title to “Portrait of Wally” neither as a *bona fide* purchaser nor by prescription because he had reasons to doubt the Belvedere acquired title and he never performed a sufficient investigation.
  - Finally, the Court did not decide on summary judgment if Dr Leopold knew that the painting was stolen when he imported it in the United States<sup>10</sup>. The Court estimated that the question is properly one for the jury. The parties settled before the beginning of the trial. Therefore, this question remained unsolved.

#### IV. Adopted Solution

##### Financial compensation – Loan – Symbolic gesture

- On 19 July 2010, a stipulation and order of settlement and continuance was entered.
- The parties agreed to the following conditions: The Museum Leopold will pay US \$ 19.000.000. - to the heirs of Mrs Bondi; “Portrait of Wally” will be loaned for three weeks at the Museum of Jewish Heritage in New York; the action will be dismissed with prejudice, without costs and/or attorney’s fees to any party; the painting will be returned to the Leopold Museum; a permanent exhibition signage will be displayed next to the painting stating in particular that “based on the evidence presented during the case, the United States District Court in New York concluded in 2009 that the Painting was the personal property of

<sup>7</sup> *United States of America v. Portrait of Wally*, 663 F. Supp. 2d 232 (S.D.N.Y. 2009).

<sup>8</sup> *United States of America v. Portrait of Wally, a painting by Egon Schiele, Defendant in Rem*, 105 F. Supp. 2d 288 (S.D.N.Y. 2000), para. 10.

<sup>9</sup> *United States of America v. Portrait of Wally*, 663 F. Supp. 2d 232 (S.D.N.Y. 2009).

<sup>10</sup> *United States of America v. Portrait of Wally*, 663 F. Supp. 2d 232 (S.D.N.Y. 2009).

Lea Bondi Jaray and that it was stolen from her in Vienna in the late 1930's by Friedrich Welz, who was a member and collaborator of the Nazi party".<sup>11</sup>

- Exclusive jurisdiction is attributed to the United States District Court for the Southern District of New York. The settlement governing laws are the laws of the State of New York.<sup>12</sup>

## V. Comment

- Maybe the most important issue in this case is the broad definition of "stolen" under the NSPA: "An item is stolen if it belonged to someone who did not [...] consent".<sup>13</sup> "Portrait of Wally" was not part of Würthle Gallery who Mrs Bondi "sold" (Aryanization) to Mr Welz. Therefore Mr Welz took "Portrait of Wally" without the consent of Mrs Bondi who surrendered the painting fearing that Mr Welz would prevent her to flee the country. If "Portrait of Wally" was part of Würthle Gallery, it seems that the Court would not consider it as Nazi-looted art or as stolen under NSPA because it was not wrongfully taken under the German laws of that time.
- One may wonder why the U.S. Government was involved for such a long period of time in a litigation maybe wasting resources for what is a purely civil matter issue about ownership (and not a civil forfeiture). Indeed, the US Government convened "the 1998 conference of government officials, art experts, museum officials, and other interested parties from around the world to consider and debate the many issues raised by the continuing discovery of Nazi-looted assets including artworks, resulting in the promulgation of the Washington Principles".<sup>14</sup>

## VI. Sources

### a. Court decisions

- *United States of America v. Portrait of Wally, a painting by Egon Schiele, Defendant in Rem*, 105 F. Supp. 2d 288 (S.D.N.Y. 2000) (granting motion to dismiss)
- *United States of America v. Portrait of Wally, a painting by Egon Schiele, Defendant in Rem* 2000, U.S. Dist. LEXIS 18713 (S.D.N.Y. 2000) (permitting amendment of complaint).
- *United States of America v. Portrait of Wally, a painting by Egon Schiele, Defendant in Rem* 2002 U.S. Dist. LEXIS 6445 (S.D.N.Y. 2002) (denying motions to dismiss).
- *United States of America v. Portrait of Wally, a painting by Egon Schiele, Defendant in Rem*, Opinion and Order, 663 F. Supp. 2d 232 (S.D.N.Y. 2009) (denying motions for summary judgment and ordering trial).

<sup>11</sup> Stipulation and order of settlement and discontinuance, *United States of America v. Portrait of Wally, A painting by Egon Schiele, Defendant in Rem* (S.D.N.Y. 2010).

<sup>12</sup> *Ibid.*

<sup>13</sup> *United States of America v. Portrait of Wally*, 663 F. Supp. 2d 232 (S.D.N.Y. 2009).

<sup>14</sup> Spiegler, "What the Lady Has Wrought," 4.

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b. Legislation

- National Stolen Property Act, U.S. Code 1994 Title 18, Crimes and Criminal Procedures (Section 2315: Sale or receipt of stolen goods, securities, moneys, or fraudulent State tax stamps).
- Restatement (Third) Of Foreign Relations 1987 (§§ 443-444).
- Foreign Relations And Intercourse, US Code 2010 Title 22, Mutual Educational And Cultural Exchange Program (Section 2459: Immunity From Seizure Under Judicial Process Of Cultural Objects Imported For Temporary Exhibition Or Display).
- New York Code 2006, Arts and Cultural Affairs (12.01 – 12.03: Artist-art Merchant Relationships).

c. Documents

- Stipulation and order of settlement and discontinuance, *United States of America v. Portrait of Wally, A painting by Egon Schiele, Defendant in Rem* (S.D.N.Y. 2010).

d. Media

- Spiegler, Howard. “What the Lady Has Wrought: The Ramifications of the Portrait of Wally Case.” *The Art Law Newsletter of Herrick, Feinstein LLP*. 07 (2010) : 1-7.
- Dobrzynski, Judith. “The Zealous Collector: A Singular Passion For Amassing Art, One Way or Another.” *The New York Times*, December 24, 1997. Accessed August 15, 2011. <http://www.judithdobrzynski.com/3016/the-zealous-collector>.