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Stiftung
Preußischer Kulturbesitz

Berlin, October 30, 2015

DER PRÄSIDENT
MEDIEN UND KOMMUNIKATION

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PRESS RELEASE

Stiftung Preußischer Kulturbesitz (SPK) Files Motion to Dismiss in Guelph Treasure Art Restitution Case

The SPK believes the civil case stemming from a 1935 sale of medieval relics by a group of German art dealers has no merit and should not be heard in U.S. court

The *Stiftung Preußischer Kulturbesitz* (Prussian Cultural Heritage Foundation, or SPK) and the Federal Republic of Germany were named in a lawsuit (Philipp and Stiebel vs. Federal Republic of Germany and *Stiftung Preußischer Kulturbesitz*) on February 24, 2015 filed before the United States District Court for the District of Columbia in Washington, D.C., seeking restitution of a collection of medieval relics known as the "*Welfenschatz*" or "Guelph Treasure". The SPK on October 29, 2015 filed a Motion to Dismiss in this civil suit. In their lawsuit, the plaintiffs claim that the 1935 sale of the Guelph Treasure by a consortium of entities including successful art dealer firms based in Frankfurt, Germany, was forced. Having researched the historical background carefully, the SPK believes that the suit lacks merit. It further believes that the case should be dismissed under U.S. law for several reasons offered in its motion.

"As we stated when this case was originally filed in the United States, the SPK is committed to the fair and just resolution of legitimate claims to Nazi-confiscated art, consistent with the universally accepted guidelines of the Washington Conference Principles on Nazi-Confiscated Art," said Prof. Dr. Hermann Parzinger, President of the SPK. "The SPK has previously considered all of the specific facts of this case and determined that restitution was not appropriate. In 2014, the Advisory Commission also examined all information about the sale of the collection and reached the same conclusion that the Guelph Treasure's sale in 1935 was not a forced sale due to Nazi persecution. The SPK therefore believes this lawsuit before the U.S. District Court has no merit and should be dismissed for several important reasons that we have presented in detail to the Court."

The motion from the SPK asserts several grounds for dismissal, including:

- The plaintiffs cannot establish jurisdiction because the *Stiftung Preußischer Kulturbesitz*, as a governmental body, has immunity under the Foreign Sovereign Immunities Act from any claim

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brought against it in the U.S. The exceptions to foreign sovereign immunity the plaintiffs invoke do not apply in this case;

- The plaintiffs cannot establish standing, because they are not entitled to assert claims on behalf of the consortium that sold the collection in 1935. This would require certain legal steps that they have not taken;
- The plaintiffs' claims conflict with U.S. foreign policy, which for many decades has supported an "internal restitution" process by which nations resolve claims to Nazi-era property within their own borders. The fact is that this case was heard by the Advisory Commission that the Federal Republic of Germany instituted precisely to review these matters on the merits; and
- The claims could be litigated more conveniently in the Federal Republic of Germany, and should be dismissed from the U.S. Court under the doctrine of *forum non conveniens* (the doctrine permits dismissal when litigation in another jurisdiction is more convenient for the parties, the courts, or serves the public interest). This doctrine applies to this case for a number of reasons, not least because nearly all the relevant evidence is in German and is physically located in the Federal Republic of Germany.

In addition, the SPK is committed to resolutions on the merits of claims to Nazi-looted art, which is why it voluntarily submitted to the Advisory Commission process. The SPK would not have invoked the statute of limitations in this Motion to Dismiss if the plaintiffs had brought their claims to a German court after the Advisory Commission, and will not invoke the statute of limitations if the plaintiffs file a case in the Federal Republic of Germany after this suit is dismissed. Under the applicable U.S. law, the plaintiffs had several years to file these claims. The location and owner of the Guelph Treasure have been known since the end of the war, and any claims that its sale was forced should have been brought much sooner.

The Advisory Commission and the Washington Principles

"The Federal Republic of Germany is well aware of its special responsibility for coming to terms with the issue of Nazi-looted art. Germany and the Prussian Cultural Heritage Foundation unconditionally acknowledge the Washington Conference Principles," said Monika Grütters, German Federal Government Commissioner for Culture and the Media, and Chairperson of the SPK Board. "The Foundation deals

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responsibly with cultural assets which might possibly have been seized as a result of Nazi persecution. It has carefully and extensively traced the ownership history of the Guelph Treasure and submitted the case to the Advisory Commission, which – upon thorough consideration – came to the well-founded decision not to return the Guelph Treasure."

The *Stiftung Preußischer Kulturbesitz* (SPK) is committed to finding fair and just solutions to restitution claims stemming from the Nazi era. Since 1999, claimants alleging Nazi-looted art have submitted more than 50 restitution claims to the SPK, which has responded by returning more than 350 works of art and more than 1,000 books from its collections. Those restituted objects include a van Gogh drawing, a work by Munch, and the "Watzmann" by Caspar David Friedrich. Along with the SPK, other German museums and institutions have returned more than 14,300 Nazi-looted items.

In 2012, the SPK and a group of claimants, including the plaintiffs, mutually agreed to submit the Guelph Treasure restitution matter to the Advisory Commission on the Return of Cultural Property Seized as a Result of Nazi Persecution, especially Jewish Property (*Beratende Kommission*, often known as the Limbach Commission in honor of its chair, Jutta Limbach, the former president of the Federal Constitutional Court of Germany). The Advisory Commission is a highly-respected body convened in the country where the property was sold and where it is currently located, and it serves as an alternative dispute resolution mechanism that functions consistently with the German legal system. The Commission concluded in March 2014 that the 1935 sale of the Guelph Treasure was not a forced sale due to Nazi persecution, and therefore the Commission could not recommend restitution.

The Advisory Commission adjudicated the claim on the merits. Nothing in U.S. law allows the plaintiffs to re-try their claims in a U.S. court. While the SPK believes that it would win on the merits in U.S. District Court as it has previously convinced the Advisory Commission, several doctrines of U.S. law – as articulated in the motion filed today – require that this suit be dismissed now.

For more information on the Advisory Commission and the implementation of the Washington Principles in Germany, please visit: www.lostart.de

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Background on the Guelph Treasure Matter

In 1929, a consortium of entities including successful art dealer firms based in Frankfurt, Germany, came together to purchase a collection of medieval German church art from the Duke of Brunswick-Lüneburg that dates back to the 1600s. Known as the Guelph Treasure, the collection was originally housed at the Brunswick Cathedral in Brunswick, Germany. The consortium intended to resell the Guelph Treasure and turn a profit. Several weeks after they paid a princely sum for the collection, the U.S. stock market crashed, ushering in the years of worldwide economic hardship that would come to be known as the Great Depression. Art prices fell along with the stock market. The consortium of art firms had invested a fortune in this joint investment, hoping for a profit, but it could find no buyers for the whole collection.

The consortium contacted museums and collectors in the U.S., Germany and the rest of Europe, including the Metropolitan Museum of Art in New York. It even arranged an elaborate tour of the collection across the U.S. Giving up its initial hope of selling the collection as a whole, the consortium began to sell off pieces. The buyers were individual collectors and museums, among them the Cleveland Museum of Art. When it had sold what it could, the consortium stored the rest of the Guelph Treasure in Amsterdam while the Great Depression ground on.

Almost two years later, the consortium began negotiating with a German bank that expressed interest in purchasing the remainder of the Guelph Treasure for an undisclosed client. Initial offers were made on each side, and, after extensive negotiations, the consortium and the bank compromised on a number roughly midway between their initial offers. On June 14, 1935, the contract was concluded. The consortium received what was promised in the deal, and nothing more was heard for more than 70 years.

In 2008, several individuals – who claim to be heirs of owners of some of the firms that participated in the consortium – contacted the SPK, which owns the Guelph Treasure and exhibits it in the *Kunstgewerbemuseum* (Museum of Decorative Arts) of the *Staatliche Museen zu Berlin* (National Museums in Berlin). The group of claimants, including the plaintiffs, advanced the theory that the Guelph Treasure sale had been forced, because the owners of the art-dealer firms in the consortium were German Jews, the undisclosed client of the negotiating bank was the

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State of Prussia, and the Nazi party had come to power in 1933. The SPK conducted an extensive investigation into the circumstances of the 1935 transaction. Consistent with its policy of openness, it shared its findings and historical documentation with the plaintiffs through extensive correspondence. Based on the investigation, the SPK concluded that the 1935 sale had been a voluntary, fair-market transaction.

Each side presented its view of the case to the Advisory Commission beginning in 2012. On March 20, 2014, the Commission concluded on the merits that the "sale of the Welfenschatz was not a compulsory sale due to persecution." It found that "[a]lthough the commission is aware of the difficult fate of the art dealers and of their persecution during the Nazi period, there is no indication in the case under consideration by the Advisory Commission that points to the art dealers and their business partners having been pressured during negotiations, for instance by Göring. Furthermore, the effects of the world economic crisis were still being felt in 1934/1935…. Moreover, there is no evidence to suggest that the art dealers and their business partners were not free to dispose of the proceeds." Almost a year after the decision, plaintiffs Alan Philipp and Gerald G. Stiebel filed a civil lawsuit against the SPK and the Federal Republic of Germany in U.S. District Court in Washington, D.C.

The SPK is represented in this matter in the United States by the law firm of Wiggin and Dana.

Further information about the Guelph Treasure and a detailed historical review of the sale in 1935 are available at:
www.preussischer-kulturbesitz.de/en/priorities/provenance-research-and-issues-of-ownership/in-focus-the-guelph-treasure.html

About the SPK

With its museums, libraries, archives and research institutes, the *Stiftung Preußischer Kulturbesitz* (Prussian Cultural Heritage Foundation) is one of the most important cultural institutions in the world. Its outstanding collections include all areas of cultural tradition: from archaeological and ethnological objects by way of the visual arts to literature and music. They are the basis of intense scholarly and educational work. The combination of art and culture, with science and research, is an unmistakable feature of the Foundation.

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The Foundation was established in 1957 by federal law as a foundation directly responsible to the German government. It is financed by the German federal government – from the budget of the commissioner for culture and the media – and Germany's sixteen states.

For more information about the SPK, please visit:
www.preussischer-kulturbesitz.de/en.html.

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