

June 19, 2008

Mr. Wesley A. Fisher
Director of Research
Conference on Jewish Material Claims Against Germany
1359 Broadway, Room 2020
New York, NY 10018

Dear Mr. Fisher:

Thank you for your recent letter alerting us to your concerns regarding “quiet title” actions recently filed by some museums in relation to Holocaust-era claims.

AAM’s goals are the same as the Claims Conference’s: to ensure that no object spoliated from its rightful owner during the Nazi era without subsequent restitution remains on US museum walls and that all meritorious claims made to objects in US museums receive an equitable and appropriate resolution. AAM and the American museum community are committed to achieving the highest standard of legal and ethical collections stewardship. When faced with the possibility that an object in a museum’s custody might have been unlawfully appropriated as part of the abhorrent practices of the Nazi regime, a museum’s responsibility to practice ethical stewardship is paramount.

The *AAM Guidelines Concerning the Unlawful Appropriation of Objects During the Nazi Era* play a crucial role in ensuring these outcomes. The *Guidelines* are an official AAM Standard. As such, they represent a generally accepted level of professional practice that all museums—accredited or non-accredited, AAM member or non-member—are expected to achieve. We greatly appreciate the Claim’s Conference’s support of our efforts to this end including most notably your financial support for the operation of the Nazi Era Provenance Internet Portal and support for our ongoing efforts to educate museums about their obligations under the *AAM Guidelines*. AAM is proud that, through the efforts of our organizations working in collaboration, US museums have been able to reach

amicable settlements with claimants in over a score of Nazi-era assets cases since 1998.

The *AAM Guidelines Concerning the Unlawful Appropriation of Objects During the Nazi Era* spell out the specific steps museums should take to ensure that claims of ownership asserted in connection with objects in their custody are treated openly, seriously, responsively, and with respect for the dignity of all parties involved.

First, museums must review a claim promptly and thoroughly, conducting their own research and requesting evidence of ownership from the claimant in order to assist in determining the provenance of the object. We absolutely agree with point (1) of your letter: as an integral part of this process, museums should indeed “confer with [claimants] or their representatives in good faith with the aim of ascertaining whether the claimants have a basis for a claim of unlawful loss and for being the appropriate heirs...without regard to statute of limitations or any other doctrines or laws concerning the timeliness of bringing claims.”

Once this review and research is completed, the *Guidelines* state that the next step is to make a determination as to whether the historical and documentary record jointly established by the museum and the claimant constitutes evidence that the object was unjustly appropriated without subsequent restitution. Ultimately, the responsibility for making that determination rests most appropriately with the museum.

Why should the museum alone be charged with making this crucial determination? The museum holds the objects in their collections in trust for the public benefit. As public trustees, museum board members have a fundamental obligation to ensure that no object entrusted to them is either wrongfully retained on one hand or wrongfully remanded or converted to private ownership on the other. This ethical obligation is a bedrock responsibility of public stewardship. Museums will be held accountable for exercising their stewardship responsibility on this point by the law, the press, and the public. AAM can neither request nor require that museums set it aside.

AAM also recognizes that due to the tragic circumstances of the Holocaust, Nazi-era assets claims are qualitatively different from other ownership claims. In determining whether an object may have been unlawfully appropriated without restitution, the *Guidelines* include crucial requirements which enjoin museum governing authorities to give full faith and credit to meritorious claims. To this end:

- Museums are directed to give “reasonable consideration...to gaps or ambiguities in provenance in light of the passage of time and the circumstances of the Holocaust era.”
- If the preponderance of the evidence would persuade a reasonable observer that the object was indeed looted without subsequent restitution, museums are required to “seek to resolve the matter with the claimant in an equitable, appropriate, and mutually agreeable manner.”

To prevent museums from making these determinations in an arbitrary, capricious, or unreasonable manner, the *Guidelines* impose an obligation of transparency. Museums “should be prepared to respond appropriately and promptly to public and media inquiries” concerning any claims cases. This ensures that the museums’ governing authorities will be accountable for their decisions to the claimant and the public alike.

The three specific cases you cite—*Toledo Museum of Art v. Ullin*, *Detroit Institute of Arts v. Ullin*, and *Museum of Modern Art et. al. v. Schoeps*—have been studied closely by AAM. In each of these cases, AAM finds that the museums have been diligent in communicating openly with the claimant(s), reviewing the claim promptly and thoroughly, in conducting their own research, and in requesting evidence of ownership from the claimant. AAM also finds that the museums have been transparent in sharing the results of that research—to wit, that the historical evidence did not support the claim—with the claimant(s) and with the public at large through press releases, media interviews, and Internet postings. We therefore feel that in these cases the museums have acted in accord with the letter and the spirit of AAM’s *Guidelines*.

The *AAM Guidelines Concerning the Unlawful Appropriation of Objects During the Nazi Era* represent a careful balancing of obligations. The *Guidelines* recognize that in order to achieve an equitable and appropriate resolution of meritorious Holocaust-era claims, museums may elect to waive available legal defenses that they would otherwise have an affirmative obligation to assert. The record shows that this is exactly what museums have done and continue to do when presented with such meritorious claims—a record in which AAM and the US museum community take great pride.

What the *Guidelines* cannot do is relieve museums of their obligation, as public trustees, to ensure that items entrusted to them for the good of the public are not converted to private ownership on the basis of a non-meritorious claim. Invoking legal defenses to prevent such an unfortunate outcome remains one of the obligations of stewardship.

I hope this clarifies the requirements of the *AAM Guidelines* and their provisions for ensuring that US museums address all Holocaust-era claims openly, seriously, responsively, and with respect for the dignity of all parties involved. We thank you again for your sustained, collaborative engagement with us in this important work.

Sincerely,

A handwritten signature in black ink, appearing to read "Ford W. Bell". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Ford W. Bell, DVM

Cc: AAM Board of Directors