

**UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF NEW YORK**

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**ASSOCIATION OF HOLOCAUST VICTIMS FOR RESTITUTION :
OF ARTWORK and MASTERPIECES, a/k/a "AHVRAM"; : 04 – CIV - 8457
MRS. ERNA DEUTSCH; DR. JORAM DEUTSCH; : (LTS)
ALICE BURGER – FISCHER; and EDWARD DAVIS FAGAN; :
Plaintiffs, :
vs. :
REPUBLIC OF HUNGARY; :
Individually and/or As Responsible For: :
HUNGARIAN NATIONAL GALLERY, MUSEUM DE BEAUX :
ARTS, MINISTRY OF CULTURE, and other HUNGARIAN :
STATE MUSEUMS and/or STATE & ART RESTORATION :
FACILITIES (the name being fictitious and used until the actual :
actual names is/are discovered); and :
REPUBLIC OF GERMANY; :
Individually and/or As Responsible For: :
BUNDESMINISTERIUM DER FINANZEN; BUNDESREPUBLIK: :
DEUTSCHLAND FINANZAGENTUR GmbH; HON. ROLF :
DAHLGRÜN by ESTATE OF HON. ROLF DAHLGRÜN; :
DR. FÉAUX DE LA CROIX by ESTATE OF DR. FÉAUX :
DE LA CROIX; WILHELM HÖTTL by ESTATE OF :
WILHELM HÖTTL; MR. FRITZ KOPPE by ESTATE OF :
FRITZ KOPPE; DR. DETLEV HEINRICH by :
ESTATE OF DR. DELEV HEINRICH; OLAF FREIHERR :
von KLINGSPOR by ESTATE OF OLAF FREIHERR :
von KLINGSPOR; GEORGE de MASIREVIC by ESTATE OF :
GEORGE de MASIREVIC; DR. ERICH FÜHRER by ESTATE :
OF DR. ERICH FÜHRER; "GERMAN GOVERNMENT :
MUSEUMS, GALLERIES, STORAGE & RESTORATION :
FACILITIES" (fictitious names used until actual names is/are :
discovered), "JOHN DOE PRIVATE MUSEUMS, GALLERIES, :
STORAGE & RESTORATION FACILITIES" (fictitious names :
used until actual names is/are discovered); :
PHILIPS COLLECTION GALLERY / MUSUEM :
Defendants. :
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**EDWARD D. FAGAN AFFIDAVIT IN SUPPORT OF PLAINTIFFS'
ONGOING PROSECUTION OF THE FIRST AMENDED COMPLAINT**

Edward D. Fagan, hereby declares and says:

1. I am plaintiffs' co-counsel and one of the plaintiffs herein.

2. I am submitting this Affidavit in support of the Court's Request for a Declaration setting forth the plaintiffs' bona fide efforts to continue the prosecution of this case.

ONGOING RESEARCH & INVESTIGATIONS

3. Since bringing this matter to the Court's attention, plaintiffs among other things: expended significant efforts, energies and resources in ongoing:
- a. Document research in Germany, Austria, Hungary, Russia, Switzerland and the United States; and
 - b. Investigation of fact witnesses in Germany, Austria, Hungary, Russia, Switzerland and the United States.
4. In the last few weeks and months, plaintiffs have had meetings with their experts, researchers and consultants in Germany, Austria and Switzerland.

FIRST AMENDED COMPLAINT

5. As a result of the research plaintiffs have discovered the specific facts and evidence that allowed plaintiffs to file the First Amended Complaint, dated March 3, 2005.
6. This First Amended Complaint contains the specific language to which plaintiffs referred at the last December 2004 Conference.
7. Plaintiffs respectfully submit that the First Amended Complaint sets forth the factual basis for this Court's exercise of jurisdiction over the defendant sovereigns' actions which bring the case under the exceptions to the applicable provisions of the Foreign Sovereign Immunity Act.
8. On March 4, 2005, The Clerk of the Court issued Amended Summonses in accordance with the Court's prior directives.

- Case 1:04-cv-08457-LTS Document 8 Filed 03/14/2005 Page 3 of 5
9. Plaintiffs will insure that the First Amended Complaint and the Amended Summonses are served in accordance with the Hague Convention service requirements and within the 120 day period from the issuance of the Amended Summonses as required by the Federal Rules of Civil Procedure.

NEW EVIDENCE AND RULE 27 PETITION

10. In addition to those matters which the plaintiffs knew as of the last Conference, plaintiffs discovered the existence of facts and evidence that the defendants Republic of Germany (Germany) and Republic of Hungary (Hungary) actively conspired with one another against the plaintiffs and plaintiffs predecessors and that officials of defendant Germany offered and paid monies to defendant Hungary and allowed defendant Hungary to wrongfully retain some of plaintiffs property in exchange for its participation and assistance in the conspiracy.
11. Plaintiffs have also discovered that several of the fact witnesses who have first hand knowledge of events related to and consequences of the conspiracy against the plaintiffs. These include persons in the United States, Switzerland, Germany and Austria. And, plaintiffs will be making a separate application to request the Court permit the taking of depositions to preserve this evidence.
12. Plaintiffs have also just discovered that one of more non-party entities has possession, custody and/or control of documents and information which plaintiffs need and as to which plaintiffs anticipate the potential need for a Rule 27 Petition for Preservation of Evidence. *See attached March 3, 2005 letter Ed Fagan to Commission for Art Recovery relating to such Evidence, the production of which has been refused.*

13. In addition to the above actions, plaintiffs have the following to report with regard to effectuating service of the First Amended Complaint on the defendants Hungary and Germany.
14. Plaintiffs have retained a Hungarian translator and paid a deposit on the translation of the First Amended Complaint into Hungarian.
15. Plaintiffs' Hungarian translator informed plaintiffs that it will take approximately 14 – 21 days to complete the translation and then it will be ready so that plaintiffs can serve it on defendant Hungary and its representatives.
16. Plaintiffs have retained a German translator and paid a deposit on the translation of the First Amended Complaint into German.
17. Plaintiffs' German translator informed plaintiffs that it will take approximately 21 – 28 days to complete the translation and then it will be ready so that plaintiffs can serve it on defendant Germany and its representatives.

SERVICE ON PHILIPS COLLECTION

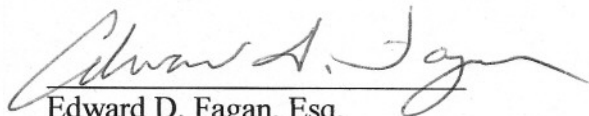
18. Plaintiffs have retained a process server to serve the defendant PHILIPS Collection.
19. Plaintiffs process server has informed plaintiffs that service on defendant PHILIPS Collection should be completed the week of March 21 – 25th.

REQUEST FOR CONFERENCE / HEARING IN APRIL

20. Plaintiffs apologize to the Court for what may have been minor delays in filing of the First Amended Complaint and for not previously informing the Court of the status of the prosecution. .

21. On a personal level, I apologize to the Court for my filing of this affidavit previously.
22. There were unanticipated problems which interfered with my ability to come into Court but which should not be construed as an failure of plaintiffs to diligently prosecute the action.
23. In the coming week, plaintiffs will be submitting the necessary papers related to the potential Rule 27 Petition and/or Application for an Expedited Hearing related to the newly discovered evidence referred to above. For ease of reference, I am attaching a copy of the request that one of the entities which is in custody, possession and control of the documents and evidence which will necessitate the plaintiffs filing.
24. Plaintiffs respectfully request that the Court consider scheduling a Conference and/or Hearing for the earliest convenient date and time in April.
25. In view of the foregoing, plaintiffs respectfully submit that the Court should permit plaintiffs to continue the prosecution, should consider granting plaintiffs request for discovery to preserve evidence and granting plaintiffs request for expediting certain aspects of the case.

Dated: March 14, 2005


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Plaintiff Pro-Se and Plaintiffs' Co-Counsel