

PRACTICAL IMPLICATIONS OF THE 2025 HEAR ACT

On December 10, 2025, the U.S. Senate passed an expanded version of the Holocaust Expropriated Art Recovery Act (“2025 HEAR Act”). The 2025 HEAR Act is now before the House of Representatives, where it may be referred to committee for further consideration or scheduled for an immediate vote. If the 2025 HEAR Act passes the House and is signed by the President, it will become law. A copy of the pending legislation can be found here: <https://www.congress.gov/bill/119th-congress/senate-bill/1884/text>.

The 2025 HEAR Act, like its 2016 predecessor, would establish a six-year statute of limitations for claims to recover property lost because of Nazi persecution. The limitations period would begin when claimant discovers the identity and location of the property and their alleged interest in the property. The 2025 HEAR Act would also eliminate a good faith owner’s longstanding equitable and substantive defenses and weaken immunity otherwise provided to foreign sovereigns and their agencies and instrumentalities.

As a former major museum general counsel and experienced trial lawyer, Thaddeus Stauber and our team have been front and center on these issues since various governments and stakeholders met in the 1990s to discuss a comprehensive approach to unresolved claims for art stolen during World War II. Those discussions led to the Washington Principles (1998), which we helped draft, and later the Terezin Declaration (2009). And in 2016, the U.S. Congress passed the original HEAR Act to establish a uniform statute of limitations for these claims in U.S. Courts.

In the years since the Washington Principles, we have been lead counsel to foreign sovereigns, cultural institutions and private collectors in dozens of lawsuits and investigations. Our deep experience includes claims for artworks by Vincent van Gogh, Pablo Picasso, Paul Gauguin, Camille Pissarro, El Greco, Henri Matisse, Egon Schiele, Lucas Cranach the Elder, Camille Courbet, Oskar Kokoschka, Edgar Degas and other great artists. We have prevailed in nine of eleven cases that reached final resolution, including two cases that went to a full and final verdict, and have secured published decisions for our clients in courts across the U.S., including trial courts in New York, California, Texas and Louisiana, and appeals courts in the Fourth, Fifth, Sixth, Seventh, Ninth and D.C. Circuits, and the U.S. Supreme Court. And where called for, we have crafted and implemented fair and just resolutions that have been acknowledged by the international cultural community as model settlements. Our past and present clients include Thyssen-Bornemisza Collection Foundation (Spain), National Gallery (U.K.), National Gallery and Museum of Fine Arts (Hungary), the Kingdom of the Netherlands, Museum of Fine Arts, Houston, Toledo Museum of Art, Detroit Institute of Art, Art Institute of Chicago, Yale University Art Museum, Rhode Island School of Design, and the University of Oklahoma.

In each and every one of our cases, we proactively engaged in detailed international provenance research to determine if the claim was meritorious, and we then shared our research as expected by the Washington Principles. The research allowed us to guide our client and develop a strategy for responding to the claim, and our transparent approach fostered open discussions about the relevant historical facts and merits of the claim. Where resolution was not possible,

we presented the well-developed factual record to the Court and successfully established our clients' good faith ownership rights. Our success in this field in cases such as *Cassirer v. Thyssen-Bornemisza; de Csepel v. Hungary*; and *Emden v. Museum of Fine Arts, Houston* is cited as justification for the expanded 2025 HEAR Act.

As drafted, the 2025 HEAR Act would preclude good-faith current owners of newly disputed artworks from seeking application of well-grounded substantive and equitable defenses, such as the act of state doctrine, acquisitive prescription and *laches*. These non-controversial defenses have broad application beyond World War II property claims. For example, the act of state doctrine prevents U.S. courts from reviewing or overturning a foreign government's official action. Acquisitive prescription, common in European substantive property laws, vests an owner with lawful title after a period of open and public ownership. And *laches* bars claims where the plaintiff knowingly delayed pursuing the claim which resulted in the loss of witnesses or other evidence that might help determine the claim's merits. The 2025 HEAR Act would eliminate and other defenses in these cases, and would also relax established rules of immunity to allow more U.S. lawsuits against foreign governments and their agencies and instrumentalities. These changes to the HEAR Act disregard the current owner's good faith acquisition and ownership, ignore the prejudice caused by a claimant's knowing lack of diligence, and favor application of U.S. property laws whether or not the property or current owner has any connection to the U.S.

Having led this field over the last three decades, it is clear to us that if the 2025 HEAR Act becomes law, there will be an increase in U.S. claims. We also expect greater scrutiny of all available information about the ownership of pre-war artworks, including artworks owned by museums and other cultural institutions, private artworks lent for exhibitions or featured in publications, artworks being auctioned, offered as part of an estate, or passed by inheritance/succession planning, and artworks being used as security or being monetized in some other fashion. Current owners and their trusted advisors must prepare for an increase in claims and litigation and, without the defenses that are being eliminated, a greater likelihood the filed cases will proceed to trial where a U.S. jury will determine the outcome.

The need for thorough historical research and sound legal strategies that directly address the substance of the claims will be critical under the new law, and current owners must be equipped for success. We have helped numerous owners—including members of the Jewish community who are themselves modern day, good faith owners—investigate the relevant historical facts and are well-positioned to issue opinions of good title, and when the claims cannot be resolved, we have successfully helped modern day owners prevail on the merits of these claims.

We continue to monitor the progress of the 2025 HEAR Act and are available to answer any questions you may have about its practical implications. For inquiries, please contact Thaddeus J. Stauber, tstauber@nixonpeabody.com, Aaron M. Brian, abrian@nixonpeabody.com, or Zachary C. Osinski, zosinski@nixonpeabody.com.