

Mr. Jan Horbaly,  
Chief Clerk  
U.S. Court of Appeals for the Federal Circuit  
717 Madison Pl., NW  
Washington, DC 20439

October 21, 2004

Re: ACHENBACH v. US, 04-5017

Dear Mr. Horbaly:

Pursuant to Fed. R. Civ. Proc. 28j and by Federal Express, I hereby submit six copies of this letter of Citation of Supplemental Authorities for the above-captioned case whose oral argument is scheduled for November 1, 2004. I am simultaneously sending by Federal Express two copies to Ms. Katherine Bleeker, Attorney for the United States. The body of this letter contains 320 words.

CITATION OF SUPPLEMENTAL AUTHORITIES

The Supreme Court on June 7, 2004, in Republic of Austria v. Altmann,<sup>1</sup> affirmed the decision by the Court of Appeals for the Ninth Circuit<sup>2</sup> allowing the plaintiff to sue for the return of paintings of great value that were stolen by the Nazis in 1940 and wound up in the Austrian Gallery. Although the main issue in the Supreme Court was Austria's motion to dismiss the case under the Foreign Sovereign Immunities Act, Austria had also raised the defense of *forum non conveniens*. This defense was rejected by the district court on the ground that Austria's statute of limitations might operate to defeat plaintiff's claim in an Austrian court, leaving plaintiff "without a remedy."<sup>3</sup>

The Altmann case connects up with the present Achenbach case in the following ways. Altmann involved an event that occurred in 1940; Achenbach involved events around the same time period, in 1941-45. In both cases there was deliberate concealment by the defendants of the material fact that would prove legal liability. Although the Altmann plaintiff knew the whereabouts of the paintings, she had falsely been told that they had been donated to the Gallery). In Achenbach, the plaintiffs were aware of their injuries inflicted by Japan, but did not know and had no reason to know that the United States had kept them in harm's way. In both cases, the defendants' liability came to light very recently. In Altmann, documents that surfaced in 1998 cast doubt upon the Austrian Gallery's claim that the paintings had been donated. In Achenbach, suspicion that the

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<sup>1</sup> Republic of Austria v. Altmann, 124 S.Ct. 2240 (2004).

<sup>2</sup> Altmann v. Republic of Austria, 317 F.3d 954 (9<sup>th</sup> Cir. 2002).

<sup>3</sup> Altmann v. Republic of Austria, 142 F.Supp.2d 1187, 1209 (C.D.Cal. 2001). In addition, the district court found that the Austrian court's filing fees were excessive. However, the Court of Appeals rejected the excessive-fee ground. 317 F.3d at 973.

United States had deliberately kept the plaintiffs in harm's way surfaced in 2000 as the result of a historical reconstruction initiated by the plaintiffs' attorney. In both cases, key documents are still being concealed, the most important being the Roosevelt-Churchill transcripts in the Achenbach case. In both cases, automatic application of the statute of limitations would arguably work an injustice upon the plaintiffs.

Respectfully submitted,