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Dear Prof. Jabloner,

As you know, I have for many years complained of the grave injustice done in the case of the Klimt painting "Amalie Zuckerkandl," owned by Ferdinand Bloch-Bauer. I am aware that in June 2008 you wrote to Minister Schmied that you did not find there had been a relevant change in the law or facts of the case that would warrant allowing the Beirat to reconsider the matter. However, I received an unexpected telephone call last week that has forced me to look at the matter once again, and I am hopeful that you also will be willing to take another fresh look at the case.

This weekend I was called by one of the heirs of Amalie Zuckerkandl (who spoke with me after confirming that he was not currently represented by an attorney). He told me **something I did not know before**, and that should have been revealed by Dr. Noll to the Arbitration panel in 2006 – namely, that Ruth Pleyer, who testified as the sole witness in the arbitration, had a significant monetary interest in the outcome of the case and had been compensated by the Zuckerkandl heirs for other work performed on behalf of the family.

This news came as a surprise to me, because during the arbitration, when asked if I objected to Ms. Pleyer testifying, I volunteered, out of an ethical concern for honesty and correctness, that I myself had paid Ms. Pleyer a small sum for work done for me in an unrelated manner. I assumed that Dr. Noll would have also made such a revelation, if Ms. Pleyer had received compensation, or expected to receive compensation, from his clients, the Zuckerkandl heirs, but Dr. Noll was silent on this issue. And Ms. Pleyer also did not disclose that she had a monetary interest in the

outcome of the case. This led me to believe, and I trust the Arbitrators also,¹ that Ms. Pleyer was testifying as an uninterested witness/historian. But this was apparently not the case. She was an interested party.

The Arbitrators' decision not to return the painting to the Bloch-Bauer heirs was made in large part based on Ms. Pleyer's testimony that Minnie Müller-Hofmann told her "dass der Herr Bloch-Bauer aus dem Exil dafür gesorgt hat, dass dieses Bild ihrer Familie zurückgegeben wird."² From this vague, n-tuple hearsay, the Arbitrators concluded that "das Bild auf Veranlassung von Ferdinand Bloch-Bauer von Dr. Führer freiwillig und ohne Gegenleistung an Hermine Müller-Hofmann herausgegeben worden ist." I have long questioned this completely unsupported conclusion as highly implausible, if not factually impossible, and legally irrelevant. Perhaps, upon consideration of the new evidence concerning Ruth Pleyer's monetary interest in the case, you will too.

Beyond this new evidence that puts into question Ms. Pleyer's testimony, there has been a **change in the law** that also should justify a reconsideration of the case. In 2009, the KunstrückgabeG was amended to provide for the possibility of reversing transactions taken outside Austria. At the time of the alleged transfer between Ferdinand Bloch-Bauer and Minnie Müller-Hofmann that the Arbitrators determined, Ferdinand was no longer in Austria, and neither was Minnie Müller-Hofmann, who spent much of the war in hiding in Bavaria. Therefore, if such a transaction occurred, it could have at least partly taken place **outside present-day Austria**. This would make the case fall squarely under the new amended section added to the law in 2009. Certainly, it is permissible to ask the Beirat to determine whether the painting may be returned under the amended law.

I believe that these new facts and legal issues justify reconsideration of this matter by the Beirat. I hope that if the case is reconsidered, it will be judged *de novo*, because I am very confident that your Beirat will come to a quite different conclusion. As I have pointed out before, at the time of the Arbitration decision, the government (Dr. Toman) had improperly led the Arbitrators to believe that the *Beweislastumkehrung* and other provisions of the 3. RuchstellungsgG did not apply.³

¹ The Arbitrators stated in their decision: "Die Aussagen von Frau Pleyer über dieses Gespräch sind dem Schiedsgericht als vollkommen glaubwürdig erschienen." Schiedspruch, 7. Mai 2006, page 10.

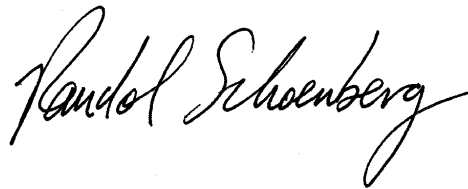
² Schiedspruch 7. Mai 2006, page 13.

³ See, for example, Protokoll, 28.02.2006, pp. 49-50 ("Toman: Ich wollte noch ganz kurz zum Fragenbereich des Nichtigkeitsgesetzes mir nur einen Hinweis noch erlauben, nämlich dass nach diesem letztendlich auch es sich handeln muss um Entziehungsmaßnahmen von Vermögensmassen, die einem am 13. März 1938 zugestanden sind. Aus dem Umstand heraus, dass auch laut der Aussage von Frau Ruth Pleyer Ferdinand Bloch-Bauer aus dem Exil heraus diese Gegenstände erst

Since 2007, however, the Beirat under your direction has applied a more correct legal standard for determining when artwork left behind by Jewish victims of the Nazis should be returned.⁴ I trust, therefore, that upon reconsideration of all the evidence, old and new,⁵ you will come to a very different conclusion than the Arbitrators.

Thank you in advance for your serious consideration of this very important matter.

Very truly yours,

A handwritten signature in black ink that reads "Randol Schoenberg". The signature is written in a cursive, flowing style.

E. Randol Schoenberg

cc: Michael Franz
Eva Blimlinger

übergeben hat, ziehe ich den Schluss, dass das jedenfalls nach dem hier in Rede stehenden 13. März 1938 geschehen sein muss, sodass demgemäß das Nichtigkeitsgesetz nicht einmal zur Anwendung gelangen kann und daher sind auch sozusagen alle weiterführenden Überlegungen im Zusammenhang damit meines Erachtens durch die klare Aussage des Gesetzes blockiert.“}

⁴ See, for example, Maria Kalbeck Mautner (23. Jänner 2009) (“Gegenständlich lässt sich zwar nicht feststellen, auf welchem Wege die Objekte von der damaligen Theatersammlung erworben wurden. Da jedoch Maria Kalbeck Mautner verfolgt war und im November 1938 Österreich verlassen musste, kann dahingestellt bleiben, ob die Objekte aus dem von der Spedition nicht abegangenen Umzugslift stammen und in der Folge beschlagnahmt wurden oder von Maria Kalbeck Mautner aus Anlass ihrer Flucht der Theatersammlung geschenkt oder an diese veräußert wurden. In jedem Fall handelt es sich um Rechtsgeschäfte, welche durch die Verfolgung von Maria Kalbeck Mautner bedingt (bzw. Teil der Verfolgung) waren. Der Beirat kommt daher zum Ergebnis, dass die Voraussetzungen § 1 Z 2 Kunstrückgabegesetz erfüllt sind.”)

⁵ All documents related to the Amalie Zuckermandl painting case can be found at <http://bslaw.com/altmann/Zuckermandl/>. All documents relating to all other Bloch-Bauer matters can be found at <http://bslaw.com/altmann/>.