

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN**

In re	)	
	)	Chapter 9
CITY OF DETROIT, MICHIGAN	)	Case No.: 13-53846
Debtor.	)	Hon. Steven W. Rhodes
	)	
	)	
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**CITY OF DETROIT’S MOTION TO EXCLUDE TESTIMONY OF  
VICTOR WIENER**

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The City of Detroit, Michigan (the “City”) moves to exclude the testimony of Victor Wiener, a putative expert offered by Financial Guaranty Insurance Company (“FGIC”). In support of its Motion, the City states as follows:

**INTRODUCTION**

1. Victor Wiener is an appraiser who purported to appraise the entire 60,000-plus collection of art at the Detroit Institute of Arts (“DIA”) in less than two weeks—a feat that even Mr. Wiener admits had never been achieved in the history of art appraisal. Mr. Wiener and his consultants, however, did not achieve it either. Instead, Mr. Wiener cut corners and employed a mishmash method that he invented for this litigation and that—as even he concedes—has never been used by any other appraiser or endorsed by any professional publication. Because FGIC cannot meet its burden to prove that Mr. Wiener’s opinions are admissible, the

Court should exclude Mr. Wiener from testifying at trial.

2. Mr. Wiener's process for determining the DIA collection's "marketable cash value" proceeded in five steps, each involving an entirely different approach. Unsurprisingly, this novel, slapdash method reveals its unreliability at every step. In fact, just two days ago, Mr. Wiener acknowledged and sought to correct numerous "errors" in his report that had caused him to overstate the value of the DIA collection by *more than \$400 million*.

- At Step 1, Mr. Wiener claims to have independently appraised 387 DIA works—and many of his appraisals vary wildly from appraisals performed by other experts in this case, including a work that he appraised at a value *172 times larger* than any other appraiser. Moreover, even though Mr. Wiener testified that it is not appropriate to appraise a work's marketable cash value simply by taking a percentage of its fair market value calculated by one of the other experts, he did precisely that with regard to numerous works.
- Step 2 required no expert method at all, and nothing more than a calculator, because Mr. Wiener merely took the average value for 596 DIA works appraised by the three other experts in the case. But the values provided by the three other experts are "fair market value" figures, which Mr. Wiener repeatedly distinguished from his "marketable cash value" approach in Step 1.
- For Step 3, Mr. Wiener used a list of 16,388 DIA works that he assumed contained "insurance value" information. Mr. Wiener never attempted to verify that the list actually provided "insurance values" or that any of the information on the list, some of which was more than a decade old, was accurate. As Mr. Wiener now acknowledges, this failure to verify the underlying data distorted Step 3: for example, Mr. Wiener initially valued *each* of the 501 pages of a manuscript at the total value of the *entire* manuscript. Mr. Wiener now concedes that this error may have been repeated for other works he valued at Step 3—but instead of correcting his data, Mr. Wiener merely applies

an arbitrary, unexplained 3.5% discount to address this risk of error. And despite the fact that insurance values undeniably yield the highest valuations among competing approaches, Mr. Wiener actually added a massive across-the-board *premium to increase* the purported insurance values.

- At Step 4, Mr. Wiener then purported to appraise a staggering 42,854 DIA works all at once, but he did not base this computation on *any* appraisal of *any* of those works. Instead, he constructed a “pricing matrix” of the average sales price, by *category*, of works sold at Christie’s and Sotheby’s in 2013, and from there assigned an average value to each DIA work. This was no apples-to-apples comparison: Mr. Wiener (1) did not assess whether the Christie’s and Sotheby’s works and the DIA works were comparable; (2) ignored that all sold works by definition have value while a large number of DIA works (*i.e.*, pot shards, textile fragments, arrowheads, and similar pieces held for academic purposes) do not; and (3) compared *all* works (including the most valuable pieces) sold by two of the premium auction houses in the world to the *bottom* two-thirds of the DIA collection left over after Mr. Wiener removed the most valuable DIA works in Steps 1, 2, and 3. Mr. Wiener therefore chose a multiplier derived from values of some of the top art sales in the world and applied it to the DIA’s lowest-value (and nil-value) pieces. This Step alone yielded an astounding \$3.5 billion in value, almost half of Mr. Wiener’s total valuation of the DIA collection.
- Despite admitting no prior use or peer approval of the “methodology” in Steps 2, 3, and 4, Mr. Wiener compounded all of these flaws at Step 5, where he simply added together the subtotals he generated in Steps 1 through 4. Mr. Wiener thus attempted to fuse marketable cash value appraisals (Step 1), fair market value averages (Step 2), insurance values multiplied by an across-the-board premium (Step 3), and average sales prices by category for unrelated works (Step 4) to divine the marketable cash value of the entire DIA collection. This haphazard method, all done in less than two weeks, predictably led to untenable results that already had to be corrected once and leave serious questions as to their reliability.

3. Finally, Mr. Wiener also was asked to critique the economic and

financial analysis performed by Michael Plummer, one of the City's experts. But Mr. Wiener is not an expert in economics and, therefore, had to outsource this assignment to others. He thus attached to his report the written analysis and conclusions of these other individuals, Mr. Zhang Yi and Dr. Jannette M. Barth, who have not been disclosed as experts and are not testifying in this case. But the Federal Rules do not permit Mr. Wiener to serve as the vehicle through which other witnesses in entirely different specialties, and who are not subject to cross-examination at trial, are allowed to testify indirectly.

4. Mr. Wiener thus rests his opinions on an unreliable and unprecedented method necessarily slapped together in less than two weeks and on the opinions of non-testifying persons on topics far beyond his area of expertise. FGIC cannot establish that Mr. Wiener's testimony is reliable, and the Court should exclude it.

### **BACKGROUND**

5. Mr. Wiener is an appraiser who, along with his consultants at Victor Wiener Associates (VWA), was retained by FGIC's counsel to appraise the "marketable cash value" of the DIA's entire 60,000-work collection. *See* Wiener Rep. 6 (Ex. A); Wiener Dep. 42 (Ex. B). Mr. Wiener distinguished "marketable cash value" from other approaches like "fair market value" taken by other experts in this case. *See* Wiener Rep. 15–16; Wiener Dep. 132–33.

6. Mr. Wiener executed his retention agreement with FGIC's counsel on

July 11, 2014, and submitted his report two weeks later on July 25, 2014. *See* Wiener Rep. 6. Mr. Wiener “felt time constraints” in performing his appraisal in less than two weeks and is not “aware of any appraiser in history ever performing a valuation of 60,000 works of art in two weeks.” Wiener Dep. 348.

7. Mr. Wiener repeatedly described his report as “preliminary.” *See* Wiener Rep. 6, 7, 19, 31, 46, 47, 48; Wiener Dep. 188. Mr. Wiener served a corrected expert report on August 20, 2014. *See* Wiener Rep. 1. Mr. Wiener sought to correct “errors” in his report, but continues to refer to his conclusions as “preliminary.” Wiener Rep. 6, 7, 19, 31, 46, 47, 48, 50.

8. Mr. Wiener followed five steps to appraise the DIA collection’s “marketable cash value.” *See* Wiener Rep. 3, 45–47. At Step 1, Mr. Wiener independently appraised 387 DIA works. *See id.* at 3, 45; Wiener Dep. 196.

9. At Step 2, Mr. Wiener computed the average value for 596 DIA works appraised in the three other expert reports in the case. *See* Wiener Rep. 3, 45–46. Those expert reports are the Christie’s Report on behalf of the City and the DIA; the Artvest Report authored by Michael Plummer on behalf of the City; and the Winston Report authored by Elizabeth von Habsburg on behalf of Syncora. *See id.*

10. At Step 3, Mr. Wiener derived the values for 16,388 works of art by adding an across-the-board appreciation premium to outdated “insurance values” for those works. *See* Wiener Rep. 3, 45–47; Wiener Dep. 70–77. Mr. Wiener

originally calculated the premium at 64.6%, but now has “corrected” it to 62%. *See* Wiener Rep. 3, 45–47; Wiener Dep. 70–77. The Step 3 approach incorporated “[t]echnical, statistical, and financial analysis” performed by Robert Leeds of Silar Advisors. Wiener Rep. 9; Wiener Dep. 192–93, 277–79.

11. At Step 4, Mr. Wiener calculated an aggregate value of 42,854 works of art by reference to a “pricing matrix” that reflected the average sales price, by category, of works sold by Christie’s and Sotheby’s in 2013. *See* Wiener Rep. 3, 45–47; Wiener Dep. 282–87. At Step 5, Mr. Wiener added the subtotals he computed in Steps 1 through 4. *See* Wiener Rep. 3, 46–47.

12. The total value of the DIA collection that Mr. Wiener originally calculated in Step 5 was \$8,552,395, which he now has “corrected” to \$8,149,232,354, a difference of more than \$400 million. *See* Wiener Rep. 3; Wiener 7/25/14 Table (Ex. C); Wiener Dep. 141.

13. Mr. Wiener was also asked to critique the discount factor analysis involving real-world analytics and economic considerations provided by one of the City’s experts, Michael Plummer, but he could not and did not perform that critique himself. Instead, he attached to his report two other written reports: a report by Zhang Yi (“Zhang Report”) and a report by Jannette M. Barth (“Barth Report”), neither of whom has been disclosed as an expert or is testifying at trial. *See* Wiener Rep. 41–44. The Zhang Report and the Barth Report purport to

challenge Mr. Plummer's financial and economic assumptions. *See id.* Presumably Mr. Wiener intends to adopt those critiques as his own at trial. *See id.*

## **ARGUMENT**

14. The proponent of expert testimony bears the burden of proving its admissibility. *See EEOC v. Kaplan Higher Ed. Corp.*, 748 F.3d 749, 752 (6th Cir. 2014). FGIC cannot establish that Mr. Wiener's testimony is admissible: Mr. Wiener did not employ a reliable method and seeks to be a mouthpiece for other specialists on matters outside his area of expertise. For each of these reasons, the Court should grant the Motion and exclude Mr. Wiener's testimony.

### **I. MR. WIENER'S UNPRECEDENTED MIX-AND-MATCH VALUATION METHOD IS UNRELIABLE**

15. Expert testimony is admissible only if it "is based on sufficient facts and data" and "is the product of reliable principles and methods" that the expert "has reliably applied . . . to the facts of the case." Fed. R. Evid. 702(c)–(d). Rule 702 "imposes a special obligation upon a trial judge" to ensure that any and all expert testimony "'is not only relevant, but reliable.'" *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 147 (1999) (quoting *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 590 (1993)). Courts determine reliability through a number of factors, including (1) whether a theory or technique can be or has been tested; (2) whether the technique has been subjected to peer review and publication; (3) whether the technique has a known or potential rate of error and the existence of

standards controlling its operation; and (4) whether the theory or technique enjoys general acceptance by experts in the field. *See Daubert*, 509 U.S. at 593–94; *Mike’s Train House, Inc. v. Lionel, LLC*, 472 F.3d 398, 407 (6th Cir. 2006).

16. Mr. Wiener’s five–step method for appraising the 60,000-work DIA collection—which he implemented in less than two weeks to arrive at his “preliminary” and now corrected conclusions, Wiener Rep. 6—is unreliable. At his deposition, Mr. Wiener freely conceded that he has *never* before used this method, that he is unaware of any other appraiser who has used it, and that he does not know of any professional publication that has endorsed it. *See* Wiener Dep. 255–58, 273, 307–08. Mr. Wiener also is not “aware of any appraiser in history ever performing a valuation of 60,000 works of art in two weeks.” *Id.* at 348.

17. This lack of peer review and general acceptance, coupled with the “novelty” of Mr. Wiener’s method, *Mike’s Train House*, 472 F.3d at 408, and his fundamental inability to provide any detail to support his calculations—stating time and again that the specifics of his methods are simply “implicit” in his conclusions, *see* Wiener Dep. 42, 43, 46, 48–49, 82, 84–87, 93, 96, 142, 241, 322, thus making it impossible to test them—demonstrate the report’s unreliability.

18. Indeed, Mr. Wiener just two days ago acknowledged and sought to correct “errors” in his report. Wiener Rep. 50. Those conceded errors caused Mr. Wiener to overstate the value of the DIA collection by more than \$400 million.



*See* Wiener Rep. 3; Wiener 7/25/14 Table. Mr. Wiener’s corrections of these errors reduced his total valuation at Step 2 by more than 28%, and his total valuation at Step 3 by more than 27%, *see* Wiener Rep. 3; Wiener 7/25/14 Table, raising serious questions about the reliability of his method.

**A. Step 1 Produces Widely Divergent Results When Compared To Other Testifiers And Utilizes A Method Even Mr. Wiener Concedes Is Inappropriate**

19. At Step 1, Mr. Wiener independently appraised the “marketable cash value” of 387 works in the DIA collection. *See* Wiener Rep. 3, 45; Wiener Dep. 196. Many of Mr. Wiener’s appraisals are outliers that diverge dramatically from the appraisals performed by other testifiers in the case, including appraisals from fellow objector Syncora’s putative expert, Elizabeth von Habsburg. *See* Wiener Dep. 245–52. While there are numerous examples of appraisals several times higher than anyone else’s, a number of Mr. Wiener’s estimates are simply off the charts. For example, Mr. Wiener appraised Accession 09.1s934 by Rembrandt at a value of \$32,5000, nearly ten times the \$3,500 appraisal value calculated by Ms. von Habsburg. *See id.* at 248. Mr. Wiener appraised another Rembrandt work, Accession 09.1s937, at a value of \$86,000—an astounding *172 times greater* value than the \$500 value that Ms. von Habsburg assigned to it. *See id.* at 250–52; *see also* FGIC-Wiener 000063 (Ex. D).

20. For other works in Step 1, Mr. Wiener appears to have applied a

simple 40% discount to the fair market value calculations of the City's experts in the case, which is no methodology at all. Curiously, Mr. Wiener admitted that it would be "inappropriate" to "take 60 percent of the fair market value to determine the marketable cash value of items of art." Wiener Dep. 88–89. Yet he did precisely that with respect to at least two works. *See id.* at 89–92. In one instance, Mr. Wiener computed the marketable cash value of a Roman marble torso of Apollo simply by taking 60% of the Christie's Report's fair market value. *See id.*; FGIC-Wiener 000034 (Ex. E). In another, Mr. Wiener computed the marketable cash value of a Mesopotamian relief panel by again taking 60% of the Artvest Report's fair market value. Wiener Dep. 89–92; FGIC-Wiener 000035 (Ex. F).

21. Compounding the problem with unpacking Step 1, Mr. Wiener did not disclose *any* data regarding comparable works of art on which he relied to perform his appraisals until just two days ago, August 20, 2014. Moreover, while the data included in Mr. Wiener's belated wholesale production appears to relate to his "comparable" works, there is *nothing* to connect the data to any work in the DIA collection. It therefore is impossible to discern which DIA works the "comparable" works relate to, or to test whether Mr. Wiener's use of those comparable works and data was accurate and reliable. And even now, it is not clear whether Mr. Wiener has disclosed *all* of the data on which he relied at Step 1: his August 20 product did not include the "electronic work file" to which Mr.

Wiener alluded at his deposition. Wiener Dep. 17, 239. Step 1 is incapable of reproduction , and regardless unreliable.

**B. Step 2 Involves No Expertise At All And Both Endorses And Piggybacks Off The Work Of Three Other Experts, Two Of Whom Are The City's Experts**

22. Step 2 of Mr. Wiener's method is an exercise in simple arithmetic, not an expert "principle[] or method[]." Fed. R. Evid. 702(c). At Step 2, Mr. Wiener credits the appraisal work done by the three other experts, and merely averages the values of the 596 DIA works already appraised in the Christie's Report, the Artvest Report, and the Winston Report. See Wiener Rep. 3, 45–46. Such rudimentary math is well within the ken of the Court and, thus, is not "helpful" or admissible as expert evidence. Fed. R. Evid. 702; *Daubert*, 509 U.S. at 591–92.

23. To wit, Mr. Wiener admitted that Step 2 was "the first time" in his career that he "created a valuation by averaging the results of appraisals done by third parties"; Mr. Wiener has "never heard of" any other appraiser "using an average of third-party appraisals to determine value"; and no professional publication states that "it is acceptable to determine a valuation of art by looking at an average of third-party appraisals of art." Wiener Dep. 257–58.

24. Mr. Wiener's adoption of and reliance on the calculations provided by the City's experts as part of Step 2 also reveals a fundamental paradox in his approach. On the one hand, Mr. Wiener plainly finds the work of the City's

experts reliable enough to adopt as the basis for his own calculations. *See* Wiener Rep. 4, 45–46. But on the other hand, and where it suits him, he seeks to criticize the City’s experts and their results. In his report, Mr. Wiener “called . . . into question” the Christie’s Report for assigning “an extremely wide range” of potential values to DIA works. *See* Wiener Rep. 19. He also disputed the Artvest Report as “lend[ing] itself to uncertainty as an appraisal report” because its author, Michael Plummer, “is not an appraiser” and, in Mr. Wiener’s view, the Artvest Report is not “compliant with” accepted appraisal standards. *See id.* at 19–20.

25. Mr. Wiener obviously cannot “reasonably . . . rely” on expert reports he believes are unreliable. Fed. R. Evid. 703. Ms. von Habsburg, co-objector Syncora’s expert, confirmed that an appraiser would “never” rely on an appraisal that she believes “is incorrect or causes concern.” von Habsburg Dep. 121 (Ex. G). Yet Mr. Wiener cannot seem to make up his mind as to whether the Christie’s Report and the Artvest Report are reliable or unreliable.

26. Regardless, the other appraisers used a fair market value approach, not a marketable cash value approach, so Mr. Wiener necessarily arrives at a computation at Step 2 that is fundamentally different from his computation at Step 1. *See* Wiener Rep. 3, 16, 45–47; Wiener Dep. 46–49.

### **C. Step 3 Rests On Unverified Data And Compounds The Flaws From Step 1**

27. Step 3 of Mr. Wiener’s method was another mathematical exercise—

one that rested on unverified data and the flawed results of Step 1. At Step 3, Mr. Wiener purported to appraise 16,388 DIA works from what he believed was a list of their “insurance values,” which had an average age of “13 years.” Wiener Rep. 3, 45–47. Ms. von Habsburg, however, testified that use of insurance values is appropriate only when there is a “primary” retail market for the work and “no significant or secondary market,” and that an appraiser should *never* rely on insurance values that are “ten years out of date,” von Habsburg Dep. 123–24, 127.

28. Ms. von Habsburg also cautioned that an appraiser would “have to do [his] research” to determine that insurance values are correct. *See id.* at 125. But the DIA spreadsheet from which Mr. Wiener took the outdated “insurance values” had only a column labeled “value” but no column labeled “insurance value.” *See* DIAINSP124564 (Ex. H); Wiener Dep. 70–77. Mr. Wiener did not independently verify that those “values” were accurate or even insurance values, but instead relied entirely upon the representation of counsel to that effect. *See* Wiener Rep. 45; Wiener Dep. 70–77. The fact of the matter is that he has no idea what those numbers represent or how they were derived.

29. Regardless, Mr. Wiener’s carelessness and failure to verify the data improperly inflated his Step 3 valuation—an error that he now has acknowledged. Wiener Rep. 50. For example, Mr. Wiener now believes that the DIA spreadsheet “gave each of the 501 pages” of “an Asian manuscript, *Perfection of Transcendent*

*Wisdom in Eight Thousand Verses*, . . . a different accession number” and a “value of \$300,000 for each page,” even though that value related to the *entire* manuscript. *Id.* Mr. Wiener therefore initially included this value “501 times” at Step 3 when he should have included it only once—a *\$150 million mistake*. *Id.*

30. Mr. Wiener readily acknowledges that the DIA spreadsheet “may include additional instances of the same mistake of listing the insurance value for one object multiple times.” *Id.* at 50. But despite this acknowledgement, Mr. Wiener has neither undertaken to verify the values in the list nor abandoned them. *See id.* Instead, he continues to rely on the spreadsheet that he believes “is incorrect or causes concern”—something Ms. von Habsburg confirmed an appraiser should “never” do. von Habsburg Dep. 121.

31. Indeed, Mr. Wiener’s only attempt to address the lurking errors in the spreadsheet is to apply an arbitrary “discount of 3.5%” to the aggregate values at Step 3. Wiener Rep. 50. Yet Mr. Wiener *never* explains where that discount comes from, how he conjured it, how it relates to the risk of error he acknowledges, or how its accuracy can be tested. *See id.* It is pure conjecture.

32. Once again, despite assuming that he was utilizing “insurance values”—closely associated with “retail replacement cost,” or the highest valuation approach possible—Mr. Wiener also did not apply *any* discount to these purported “insurance values” to convert them to the much lower marketable cash value he

sought to calculate in his report. *See id.* at 3, 45–46; Wiener Dep. 41.

33. To the contrary, Mr. Wiener actually *increased* the already swollen “insurance values” by an across-the-board premium first pegged at 64.6% and then later “corrected” to 62%. *See* Wiener Rep. 3, 45–47; Wiener Dep. 70–77. Mr. Wiener divined this premium from his own faulty appraisals in Step 1: Mr. Wiener “cross-referenced DIA insurance values to works VWA valued” in Step 1, “compared results,” and then attempted to factor the “average weighted age” for the “insurance values.” Wiener Rep. 45–46. Step 3 thus incorporates all of the flaws that rendered Step 1 unreliable and then magnifies them. *See supra* Part I.A.

34. Moreover, Mr. Wiener did not perform any of the “[t]echnical, statistical, or financial analysis” behind these calculations. Wiener Rep. 9. Instead, he outsourced that analysis to Mr. Leeds and Silar Advisors, who conduct “asset valuations” and “asset pricing” in non-art contexts. *Id.* Mr. Leeds, rather than Mr. Wiener, performed the statistical analysis and prepared the charts regarding the age of the purported “insurance values,” the weighted averages, and the projected market value for the DIA works valued at Step 3. *See* Wiener Rep. Attach. L; Wiener Dep. 192–93, 277–79. These are complicated statistical analyses that Mr. Wiener is incapable of creating, explaining, or defending on his own, a point he made repeatedly during his deposition. Wiener Dep. 58–61, 279. But neither Mr. Leeds nor anyone from Silar Advisors will be testifying at trial,

and Mr. Wiener will simply adopt the Silar conclusions as his own.

35. Mr. Wiener ignores these issues, and attempts to salvage his arbitrary 62% across-the-board premium by asserting with a straight face that Step 3 actually contains a *discount* because the premium “wasn’t higher.” Wiener Dep. 41. Again, this entirely circular proposition is *impossible to probe or test* because Mr. Wiener repeatedly takes refuge in the notion that his assumptions and calculations are “implicit” in his approach. Here specifically, Mr. Wiener was “not prepared to tell” the City’s counsel “the exact figure” of this implicit discount—and he *agreed* that it “would be very difficult to test” whether his “conclusion regarding the amount of that discount was correct.” *Id.* at 41–43. These *ipse dixit* assertions that are designed to frustrate counsel’s and the Court’s ability to understand and challenge Mr. Wiener’s conclusions render the entire report and analysis inadmissible. *See Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997) (“[N]othing in either *Daubert* or the Federal Rules of Evidence requires a district court to admit opinion evidence that is connected to existing data only by the *ipse dixit* of the expert.”); *see also* Wiener Dep. 42–43, 46, 48–49, 82, 84–87, 93, 96, 142, 241, 322 (discussing “implicit” calculations).

36. Finally, that Mr. Wiener has never before “utilized the methodology” he used in Step 3, is unaware of “anyone else in the industry who has used” it, and does not know of any “publication or treatise that suggests that it is proper,”



Wiener Dep. 273, is hardly surprising and renders Step 3 altogether unreliable. *See* Fed. R. Evid. 702; *Daubert*, 509 U.S. at 593–94.

**D. Step 4 Assigns An Average Value From Unrelated Works And Leads To Widely Disparate Results**

37. Step 4 is a crucial component of Mr. Wiener’s analysis, accounting for more than \$3.5 billion, or almost half, of the total value he ascribes to the DIA collection. *See* Wiener Rep. 3. Mr. Wiener sought to calculate the value of a staggering 42,854 works in Step 4—but he did not rely on any appraisal or purported “insurance value” for *any* of those works. *See id.* at 3, 45–47. In fact, his analysis has no bearing at all on the valuation of any piece of art at the DIA.

38. Instead, Mr. Wiener constructed a “pricing matrix” that reflected the average sales price by *category* of works sold by Christie’s and Sotheby’s in 2013. Wiener Rep. 46–47. These categories included such broad-ranging genres as “American Art” and “Old Master.” Wiener Dep. 282–87, 310, 319.

39. Mr. Wiener then assigned each of the 42,854 DIA works to one of the categories and its corresponding average adjusted sale value. *See* Wiener Rep. 3, 46–47. Mr. Wiener, however, did absolutely *nothing* to assess whether any of the DIA works of art were at all comparable to the works that Christie’s and Sotheby’s sold in 2013. *See* Wiener Rep. 3, 45–47; Wiener Dep. 292–97, 313–15.

40. Mr. Wiener’s reliance on Christie’s and Sotheby’s sales prices and his failure to assess comparability are particularly damaging here. At Steps 1, 2, and

3, Mr. Wiener already had appraised a “little less than a third” of the DIA collection—and those more than 17,000 works were the most “high-valued” DIA works. Wiener Dep. 302–303. Indeed, the 387 works that Mr. Wiener appraised at Step 1 represented the smallest number of works in any of his four groupings, but had the largest appraised value at more than \$3.56 billion. *See* Wiener Rep. 3. In other words, by the time he got to Step 4, Mr. Wiener had broken off the largest chunk of value in the DIA collection and left only the least valuable works, including works with no monetary value at all. *See* Wiener Dep. 302–03.

41. By contrast, Christie’s and Sotheby’s predominantly sell high-value works, with many sales exceeding \$1 million. *See id.* at 316; *see also* von Habsburg Dep. 130–33. Some of the world’s most extraordinary art is sold at these auction houses. That Mr. Wiener chose Christie’s and Sotheby’s sales prices as a point of comparison is therefore quite illogical, but Mr. Wiener did not exclude *any* Christie’s or Sotheby’s sales from his comparison in Step 4, let alone the most valuable one-third of those sales. *See* Wiener Dep. 316–17.

42. Thus, at Step 4, Mr. Wiener failed to assess whether the Christie’s and Sotheby’s works were comparable to the DIA works, and did not control for the fact that all of the Christie’s and Sotheby’s works had value while some of the DIA works did not. In fact, Mr. Wiener had no choice but to admit at his deposition that he had excluded “potentially the top one-third of the DIA collection’s artwork

by value but . . . included the top one-third of the Sotheby's/Christie's collection by value." *Id.* at 317.

43. Mr. Wiener again acknowledged that he has never before utilized the unorthodox average sales price approach he used in Step 4. *See id.* at 306. Step 4 is unreliable. *See Fed. R. Evid. 702; Daubert*, 509 U.S. at 593–94.

**E. Step 5 Aggregates The Faults In Steps 1 Through 4 And Yields An Inflated Appraisal Value**

44. Mr. Wiener compounded all of the flaws of Steps 1 through 4 at Step 5, where he added together the subtotals computed at the prior steps. *See Wiener Rep.* 3, 46–47. The total value of the DIA collection that Mr. Wiener calculated at Step 5 was \$8,149,232,354—*more than \$3.5 billion (or about 77%) more* than the highest estimate computed by the City's expert. *See id.* at 3; Artvest Rep. 19.

45. Mr. Wiener arrived at this inflated total by mixing and matching methods and measurements of value. Indeed, he purported to perform a marketable cash value appraisal at Step 1, averaged fair market values at Step 2, added a premium to supposed "insurance values" at Step 3, and used a comparison to Christie's and Sotheby's sales prices for a single year at Step 4. Mr. Wiener had never before "utilized different definitions of value and just add[ed] them together" in an effort to calculate a collection's marketable cash value. Wiener Dep. 140. Even Ms. von Habsburg opined that it is not "appropriate" to "mix a fair market value approach with a marketable cash value approach" to appraise a collection,

and that the appraisal standards to which Mr. Wiener clings do not permit such a method. *See* von Habsburg Dep. 121.

46. Mr. Wiener’s homemade method—slapped together in less than two weeks and never before used or endorsed—is unreliable. FGIC cannot establish that Mr. Wiener’s testimony is admissible, and the Court should exclude it.

**II. AT A MINIMUM, THE COURT SHOULD EXCLUDE ANY TESTIMONY BASED ON THE ZHANG REPORT, THE BARTH REPORT, OR MR. LEEDS’ ANALYSIS IN STEP 3**

47. Even if Mr. Wiener’s testimony somehow were admissible despite his failure to use a reliable methodology, the Court at a minimum should strike—and exclude any testimony based upon—the Zhang Report, the Barth Report, and Mr. Leeds’ analysis in Step 3.

48. An expert, “however well credentialed he may be, is not permitted to be the mouthpiece of” an expert “in a different specialty.” *Dura Auto. Sys. of Ind., Inc. v. CTS Corp.*, 285 F.3d 609, 614 (7th Cir. 2002). This commonsense rule reflects the principle that an expert may testify only regarding matters within “*the expert’s* scientific, technical, or other specialized knowledge.” Fed. R. Evid. 702(a) (emphasis added). Thus, courts routinely preclude one expert from offering testimony or evidence regarding the opinions of another expert in a different area.<sup>1</sup>

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<sup>1</sup> *See Mike’s Train House*, 472 F.3d at 409 (excluding expert testimony based upon opinion of another expert in a different area); *Sigler v. Am. Honda Motor Co.*, 532 F.3d 469, 478–480 (6th Cir. 2008) (excluding testimony of expert

49. One of the City’s experts is Michael Plummer, who authored the Artvest Report. Mr. Plummer has over 35 years of experience valuing art and advising major auction houses, private collectors, corporations, and art professionals regarding the sale and purchase of art. Artvest Rep. 12. He is an expert “in the field of analyzing art market economics, valuations, patterns and behavior.” *Id.* at 5. Thus, in addition to valuing the DIA collection, Mr. Plummer constructed a model on real-world realization of revenues from a sale of the DIA collection and opined on the “feasibility and likely effects on the market and value realization of a sale of the DIA collection under a variety of market and sale conditions.” *Id.* at 4. As part of those opinions, Mr. Plummer described “issues and dynamics currently at work in the art market in general,” outlined “trends and patterns that will affect any decision to sell into the current marketplace and estimates of value placed on the works before they are sold,” and discussed “conditions for the evaluation of a selling strategy that is undertaken either to maximize value or to find quick liquidity.” *Id.* at 6. Mr. Plummer also analyzed

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in auto mechanics that rested on testimony of expert in accident reconstruction); *Dura Auto. Sys.*, 285 F.3d at 614 (excluding expert testimony based upon opinion of another expert); *Auto Indus. Supplier ESOP v. SNAPP Sys.*, 2008 U.S. Dist. LEXIS 105961, at \*15–17 (E.D. Mich. Dec. 23, 2008) (excluding expert testimony resting on summaries prepared by another expert because an expert may not be a “mere conduit for information prepared by others”); *see also Taylor v. B. Heller & Co.*, 364 F.2d 608, 613 (6th Cir. 1966) (an expert may not testify regarding matters based “upon the opinion of others who [are] not even qualified as experts, nor present at the trial”).

“the discount factors for various sale scenarios.” *Id.* at 26.

50. Plainly Mr. Wiener was asked by counsel to challenge Mr. Plummer on his economic and financial analysis, but he is not qualified to mount such a challenge. *See* Wiener Dep. 341. He therefore outsourced this task to Mr. Zhang and Dr. Barth, and presumably seeks to become a conduit at trial for the Zhang Report and the Barth Report appended to his report. *See* Wiener Rep. 41–44; *see also* Wiener Rep. Attach. B, C.

51. Mr. Zhang, unlike Mr. Wiener, has experience in “art economic research” and “art and finance research.” Wiener Rep. 9. His 11-page, single-spaced report takes issue with the Artvest Report’s description and analysis of the current global art market. *See* Wiener Rep. Attach. B at 1–11. Mr. Zhang opines, for example, that the art market is “supply-driven,” concludes that “the growth in the art market from 2002 to 2011 is [not] a once in a lifetime event,” and considers the effect of “easy monetary policy” on the art market. *Id.* at 1, 3, 4. He also charts economic trends in the art market. *See id.* at 2, 7–8.

52. Dr. Barth, unlike Mr. Wiener, is an economist. *See* Wiener Rep. Attach. C at 1. Dr. Barth’s 14-page single-spaced report takes aim at the Artvest Report’s discussion of “economic factors” and their relevance, its “concept and application of blockage discount,” and its application of “discounts to the final valuation” of the DIA collection. *Id.* at 1.

53. Mr. Wiener, however, does not have a degree in economics, nor do any members of his VWA team. Wiener Dep. 341–42. Thus, “however well credentialed” Mr. Wiener “may be” in the field of art appraisal, he “is not permitted to be the mouthpiece of” others opining in the “different specialty” of economics. *Dura Auto. Sys.*, 285 F.3d at 614. That is especially true here because Mr. Zhang and Dr. Barth have not been identified as experts, have not produced any reliance materials or documents, and will not be testifying at trial. *See, e.g., Taylor*, 364 F.2d at 613. Thus, the Court should strike the Zhang Report and the Barth Report and preclude Mr. Wiener from testifying regarding the subjects they cover, which are outside the area of his expertise.

54. Finally, as discussed, Mr. Wiener did not perform the “[t]echnical, statistical, or financial analysis” at Step 3. Wiener Rep. 9. Mr. Wiener concedes that he is “not an expert in statistics,” so he outsourced that analysis to Mr. Leeds and Silar Advisors. *Id.*; *see also* Wiener Dep. 279. Thus, Mr. Leeds, rather than Mr. Wiener, performed the analysis and prepared the charts regarding the age of the purported “insurance values,” the comparisons of those values to Mr. Wiener’s Step 1 values for other works, and the projected current market value for the DIA works valued at Step 3. *See* Wiener Rep. Attach. L; Wiener Dep. 192–93, 277–79.

55. Even a cursory review of the two pages of charts Mr. Leeds compiled confirms that they are statistical analyses, not appraisals. *See* Wiener Rep. Attach.

L. Mr. Wiener, as an appraiser, may not “be the mouthpiece of” Mr. Leeds in the “different specialty” of technical, statistical, or financial analysis. *Dura Auto. Sys.*, 285 F.3d at 614. Thus, the Court also should exclude from trial Mr. Leeds’ work product and any testimony based upon it. *See id.*

56. Mr. Wiener’s attempt to incorporate and rely indirectly upon Mr. Leeds’ work poses practical problems for the City at trial. For example, Mr. Wiener does not know anything about Mr. Leeds’ reputation in the industry and “didn’t do any investigation as to Silar or Rob Leeds[’] prior litigation history.” Wiener Dep. 277–78. If Mr. Wiener had done so, he might have discovered that Mr. Leeds and Silar Advisors were sanctioned by a federal bankruptcy court in 2010 for improprieties before that court. *See Order On Certain Direct Lenders’ Motion For The Imposition Of Sanctions, In Re Asset Resolution, LLC*, No. 09-32824 (Bankr. D. Nev. May 25, 2010) (Ex. I).

57. The debtor in that case filed for Chapter 7 protection in Nevada, but Mr. Leeds and Silar Advisors, along with others who controlled or influenced the debtor, “sought to evade the” Nevada court’s “jurisdiction” after that court entered an order adverse to the debtor. *Id.* at 5. Among other things, the Nevada court found that Mr. Leeds personally was “involved in, and responsible for, the decision to file” chapter 11 bankruptcy cases for the debtor in New York “in an attempt to evade the jurisdiction and the adverse ruling of this Court.” *Id.* at 16. The Nevada



court found that the chapter 11 cases were “frivolous” and, thus, that Mr. Leeds and others “intentionally caused Debtors to engage in improper conduct.” *Id.*

58. The Nevada court stated on the record, and repeated in its order:

[S]omebody counseled that the way to avoid this is to get the assets out of the hands of the Federal District Court. Let’s put it into chapter 11. That gets it in front of another judge and of course as it works out now, that did not work. . . . basically what Silar and Asset Resolution . . . are doing [is] exactly what I told you not to do. Do not further rape or pillage. Do not violate your fiduciary duties to the direct lenders. I expect to hold the principals of Asset Resolution and Silar, the entities themselves and any attorneys or professionals who counseled this frivolous—under Rule 11 of the Federal Rules of Civil Procedure, this frivolous endeavor—I expect to hold you personally liable for the Rule 11 appropriate sanctions and I will expect to see those motions.

*Id.* at 11. The court made good on its word: it sanctioned Silar Advisors, Mr. Leeds personally, and the other respondents, jointly and severally, for \$279,615.47 in attorneys’ fees incurred by other parties. *Id.* at 23.

59. Mr. Leeds has not been listed as a witness at trial, perhaps for this reason, and therefore will not be subject to cross-examination on the analysis he performed for Mr. Wiener and whether it is trustworthy, placing the City at an unfair disadvantage. His analysis, and any testimony based upon it, should therefore be excluded from trial. *See, e.g., Taylor*, 364 F.2d at 613.

WHEREFORE, for the foregoing reasons, the City requests that the Court exclude the testimony of Victor Wiener from trial.

**CERTIFICATION OF COMPLIANCE WITH FEDERAL RULE OF CIVIL  
PROCEDURE 26(c)(1) AND LOCAL RULE 9014-1(h)**

In compliance with Federal Rule of Civil Procedure 26(c)(1) and Local Rule 9014-1(h), the City hereby certifies that its counsel conferred with counsel for FGIC in a good faith effort to narrow and resolve the issues raised in this motion. Ultimately, counsel were unable to reach an agreement.

Dated: August 22, 2014

Respectfully submitted,

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ATTORNEYS FOR THE CITY OF DETROIT

## **SUMMARY OF EXHIBITS**

The following exhibits are attached to this motion, labeled in accordance with Local Rule 9014-1(b):

Exhibit 1 Proposed Order

Exhibit 2 Notice

Exhibit 3 None (Brief Not Required)

Exhibit 4 Certificate of Service

Exhibit 5 None (No Affidavits Filed Specific to this Motion)

Exhibit 6 Documentary Exhibits

**EXHIBIT 1**

**Proposed Order**

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN**

In re	)	
	)	Chapter 9
CITY OF DETROIT, MICHIGAN	)	Case No.: 13-53846
	)	
Debtor.	)	Hon. Steven W. Rhodes
	)	
	)	
	)	

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**ORDER GRANTING CITY OF DETROIT’S MOTION TO EXCLUDE  
TESTIMONY OF VICTOR WIENER**

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This matter comes before the Court on the City Of Detroit’s Motion To Exclude Testimony Of Victor Wiener. Having reviewed the Motion and the Opposition, having considered the statements of counsel at a hearing before the Court, and having determined that there is no legal or factual basis for subpoena to the City’s counsel:

IT IS HEREBY ORDERED THAT the Motion is GRANTED.

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**EXHIBIT 2**

**Notice**

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN**

	)	
In re	)	Chapter 9
CITY OF DETROIT, MICHIGAN	)	Case No.: 13-53846
Debtor.	)	Hon. Steven W. Rhodes
	)	
	)	
	)	
	)	

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**NOTICE OF MOTION AND OPPORTUNITY TO RESPOND**

**PLEASE TAKE NOTICE** that on August 22, 2014, the Debtor, City of Detroit, filed its *Motion To Exclude Testimony Of Victor Wiener* (the “Motion”) in the United States Bankruptcy Court for the Eastern District of Michigan (the “Bankruptcy Court”) seeking entry of an order excluding the testimony of Victor Wiener at trial.

**PLEASE TAKE FURTHER NOTICE** that **your rights may be affected by the relief sought in the Motion. You should read these papers carefully and discuss them with your attorney, if you have one. If you do not have an attorney, you may wish to consult one.**

**PLEASE TAKE FURTHER NOTICE** that if you do not want the Bankruptcy Court to grant the Debtor’s Motion, or you want the Bankruptcy Court to consider your views on the Motion, by **August 27,2014**<sup>1</sup> you or your attorney must:

1. File a written objection or response to the Motion explaining your position with the Bankruptcy Court electronically through the Bankruptcy Court’s electronic case filing system in accordance with the Local Rules of the Bankruptcy Court or by mailing any objection or response to:<sup>2</sup>

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<sup>1</sup> This deadline was established by an order of the Court.

<sup>2</sup> A response must comply with Fed. R. Civ. P. 8(b), (c) and (e).



**United States Bankruptcy Court**  
Theodore Levin Courthouse  
231 West Lafayette Street  
Detroit, MI 48226

You must also serve a copy of any objection or response upon:

**Jones Day**  
51 Louisiana Ave. NW Washington, D.C. 20001-2113  
Attention: Gregory Shumaker

-and-

**Pepper Hamilton LLP**  
Suite 1800, 4000 Town Center Southfield, Michigan 48075  
Attn: Robert Hertzberg and Deborah Kovsky-Apap

2. If an objection or response is timely filed and served, the clerk will schedule a hearing on the Motion and you will be served with a notice of the date, time and location of the hearing.

**PLEASE TAKE FURTHER NOTICE that if you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the Motion and may enter an order granting such relief.**

Dated: August 22, 2014

Respectfully submitted,

/s/ Bruce Bennett

Bruce Bennett (CA 105430)

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ATTORNEYS FOR THE CITY OF DETROIT

**EXHIBIT 3**

**Brief (Not Applicable)**

**EXHIBIT 4**

**Certificate of Service**

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN**

In re	)	
	)	Chapter 9
CITY OF DETROIT, MICHIGAN	)	Case No.: 13-53846
	)	
Debtor.	)	Hon. Steven W. Rhodes
	)	
	)	
	)	
_____	)	

**CERTIFICATE OF SERVICE**

I hereby certify that on August 22, 2014, I electronically filed the City Of Detroit's Motion To Exclude Testimony Of Victor Wiener with the Clerk of the Court, which sends notice by operation of the Court's electronic filing service to all ECF participants registered to receive notice in this case.

Dated: August 22, 2014

/s/ Bruce Bennett  
Bruce Bennett

**EXHIBIT 5**

**Affidavits (Not Applicable)**

**EXHIBIT 6**

**Documentary Exhibits**



**Exhibit A**

*In re City of Detroit, Michigan, Case No. 13-53846 (SWR)*

**Expert Report**

**Prepared by Victor Wiener,  
Director of Victor Wiener Associates, LLC**

**July 25, 2014<sup>1</sup>**

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<sup>1</sup> This Report has been corrected as of August 20, 2014 to account for certain typographical and transcription errors, as explained in greater detail in the Addendum attached hereto.

*In re City of Detroit, Michigan, Case No. 13-53846 (SWR)*

**EXPERT WITNESS DISCLOSURE BY VICTOR WIENER, DIRECTOR OF VICTOR WIENER ASSOCIATES, LLC**

The following expert report (***REPORT***) has been prepared by Victor Wiener of the firm Victor Wiener Associates, LLC (***VWA***) an art appraisal and consultancy firm located in New York City with associates and affiliates worldwide.

The Report contains:

- The issues to be addressed
- The opinions reached in addressing these issues
- The data which was relied upon in forming these opinions
- Certain attachments, which support the opinions stated in the body of the Report
- The qualifications of the expert witness
- A list of all publications authored by the witness during the previous 10 years as stipulated
- A list of all cases in which the witness has testified as a witness within and beyond the stipulated 4 years required in this disclosure

Compensation to the witness has been agreed at \$300 per hour for the preparation of this and supplemental reports if necessary; \$400 per hour for preparation for all testimony including depositions; \$5,000 per day for deposition and court testimony; reimbursement for all out-of-pocket expenses, including travel, associated with the expert witness testimony.

**SUBJECT PROPERTY**

The subject property to be appraised is approximately 60,000 works of art (***SUBJECT PROPERTY***) comprising the entire art collection of the Detroit Institute of Arts (***DIA***) located in Detroit, Michigan.

## VALUATION CONCLUSIONS

In fulfillment of the appraisal assignment VWA reached the following valuation conclusion:

That the total value of the collection is **\$8,149,232,354** and probably more than that.

The appraised total has been determined as of July 25<sup>th</sup>, 2014.

## METHODOLOGY DETERMINING VALUE CONCLUSIONS

<b>Methodology Step by Step Chart</b>				
Step 1	Valuation of High-Value Works by VWA			
	<u># of Units</u>	<u>Low Value</u>	<u>High Value</u>	<u>Average Value</u>
	387	3,092,419,700	4,040,303,800	3,566,631,750
Step 2	Valuation of High-Value Works performed by Christie's, Artvest and Winston			
	<u># of Units</u>			<u>Average Value</u>
	596			311,370,325
Step 3	Projected valuation of works on DIA Insurance List (estimated for appreciation)			
	<u># of Units</u>	<u>DIA Insurance Value</u>	<u>% Appreciation</u>	<u>Projected Value</u>
	16,388	468,449,537	62.0%	758,888,249
Step 4	Pricing matrix of remaining works based on Christie's and Southeby's 2013 sales price by department			
	<u># of Units</u>			<u>Average Value</u>
	42,854			3,512,612,030
Step 5	Combined Value			
	<u># of Units</u>			<u>Average Value</u>
	<b>60,225</b>			<b>8,149,232,354</b>

## ASSIGNMENT

The following section discusses:

- The background of the assignment, in which specifics of the appraisal assignment are discussed
- The decision to accept the assignment
- The specific qualifications of VWA in fulfilling the assignment
- Time restrictions dictating the nature of the Appraisal Report

### **Background of the assignment**

In May 2014 Victor Wiener was contacted by Ian Peck of Art Capital Group (*ACG*), an art financing company to see if VWA would be interested in appraising the entire collection of the DIA constituting the Subject Property cited above with a view to producing an appraisal report which could be used in the process of generating a loan to the City of Detroit (*DETROIT*).

After considerable discussion, VWA committed to perform the appraisal report and ACG committed to retain the services of VWA.

At that point, ACG submitted a non-disclosure agreement in order to send Mr. Wiener confidential documents to review in order for Mr. Wiener to determine the scope of work required to fulfill the assignment.

### **The decision to accept the assignment**

Mr. Wiener had an initial hesitation in accepting the assignment; considerable attention within the media had been devoted to press stories of Detroit's bankruptcy and the possibility that the holdings of the DIA would be sold to cover Detroit's obligations.

As discussed in this report and disclosed in Mr. Wiener's CV (*see* Attachment A), Mr. Wiener has had extensive museum experience. As such, he felt that the DIA holdings should be maintained.

However, once Mr. Wiener had a chance to review the Catalogue of Information Concerning Artwork Housed at the Detroit Institute of Arts, prepared by Houlihan Lokey Capital, Inc. (*HOULIHAN CATALOGUE*), Mr. Wiener was convinced that a loan was a viable plan for the DIA collection, including the loan proposed by ACG.

In order for the loan to take place, a credible appraisal report of the DIA holdings was required.

Mr. Wiener had informed ACG that any report VWA would submit would be in conformity with the Uniform Standards of Professional Appraisal Practice (*USPAP*), the universally accepted appraisal standards within the United States and abroad for all classes of property which require appraisals.

The USPAP stresses that the USPAP have been written to contribute to "public trust" of the appraisal practice (*see e.g.* Attachment D: Select Slides from Uniform Standards of Professional Appraisal Standards course material written by the Appraisal Foundation [emphasis added by Appraisal Foundation]).

In keeping with this requirement appraisers are given the option of refusing an assignment (see EG USPAP U-8 Management).

Taking all the facts into consideration, Mr. Wiener concluded that the public trust would indeed be served if indeed VWA conducted the appraisal assignment.

Sometime after VWA had committed its services to ACG, Mr. Wiener was informed that, in keeping with confidentiality requirements and the fact that court testimony would be required, VWA would be retained by the law firm Weil, Gotshal & Manges, LLP (*WEIL*), working on behalf of Financial Guaranty Insurance Company (*CLIENT*). However, the assignment would also have the stipulation that ACG would be named as an intended user of the report and the appraisal report could also be used by any additional funders ACG may require to help in putting together the funding necessary to advance a loan to keep the DIA collection in place.

### **Specific qualifications of VWA in fulfilling the assignment**

In accepting the assignment, VWA felt extremely well qualified. Two of the principals in the appraisal process have extensive museum experience.

Victor Wiener received a certificate in Museum Training given jointly by the Institute of Fine Arts of New York University and the Metropolitan Museum of Art. In addition to having instructors from the Institute of Fine Arts and the Metropolitan Museum of Art, his instructors also included Pierre Verlet, head of the department of furniture at the Louvre, and Charles Sterling, curator emeritus of paintings at the Louvre. In addition, Mr. Wiener received a two-year fellowship from the Ford Foundation providing for internship at the Department of Prints, Drawings, and Photographs at the Metropolitan Museum of Art and the Victoria and Albert Museum in London under direct supervision of the Museum's director, Sir John Pope-Hennessy. Upon returning from London to New York, Mr. Wiener was awarded a Chester Dale Fellowship from the Metropolitan Museum of Art, providing for another year of work at the Department of Prints, Drawings, and Photographs where he curated an exhibition, "Eighteenth Century Italian Prints." In addition, prior to assuming the position of executive director of the Appraisers Association of America, Mr. Wiener worked directly for the Philadelphia Museum of Art on loan agreements and appraisals for loan exhibitions. He has also lectured on several occasions for the American Association of Museums. Further discussion of Mr. Wiener's credentials and his complete curriculum vitae are appended to this report. (*See Attachment A.*)

David Shapiro has also had direct relationships with museums in a variety of capacities. He has taught courses of art history at the Museum of Modern Art (MoMA), and he has worked as an in-gallery museum educator at MoMA PS1, the Dahesh Museum of Art, and the Bronx Museum of the Arts, interpreting collections and special exhibitions for diverse audiences, largely school groups. Mr. Shapiro's proposal to create the Rockaway Museum of Contemporary Art was featured in MoMA PS1's exhibition "EXPO 1" as a

response to a Call for Proposals to revitalize the Rockaways after the damage of Superstorm Sandy. Shapiro's writing has also been published in a catalogue by MoMA to accompany a major retrospective exhibition. Mr. Shapiro has also worked extensively with museums in external roles. At the Fashion Institute of Technology (FIT), he taught "Art in New York," an on-site course that takes place entirely in the city's museums and galleries. Presently, he works indirectly with museum collections as an editor of higher-education art history textbooks. Mr. Shapiro's academic and appraisal credentials are discussed in greater detail below.

### **Time restrictions dictating the nature of the Appraisal Report**

The retention agreement was not finalized and signed until July 11<sup>th</sup>, 2014; since all expert reports were required by the Court to be filed by July 25<sup>th</sup>, 2014, VWA had less than two weeks to finalize a report for more than 60,000 works of art.

Under these circumstances it was decided that a preliminary appraisal report would be written which would be of a summary nature; however the document to be filed would be in compliance with the USPAP in which all requirements for such a report would be fulfilled. Complete discussion of the format of the report is given below.

There were further complications impeding the timely production of the Report.

It is our understanding that the DIA was requested to produce in a timely fashion a searchable inventory of the museum collection.

Among the documents supplied to us was a 17,000-page image inventory with about 40% of the photographs of objects in the collection missing. (*See Attachment E: DIA Inventory Page, Missing Photograph Example*)

In addition, all inventory entries were in PDF format and not within a searchable or sortable format.

Furthermore, instead of giving the name of the artist or creator of specific objects all objects were named "Unknown, American." In other words, a painting by Italian Renaissance artist, Benozzo Gozzoli created ca. 1460 was labeled on the PDF, "Unknown, American," before America was discovered by Columbus; or the paintings by Van Gogh who never even visited America were called "Unknown, American." (*See Attachment F: DIA Inventory Page, Mis-labeled "Unknown, American" Examples.*)

One presumes that the DIA has a searchable database since a partial database is available online on the DIA website. This database was useful for thumbnail photographs for a selection of the works, but VWA was unable to get an electronic count of how many objects were in each of the DIA's curatorial departments.

VWA made numerous requests before our official retention to be supplied with digital data that we could use, but we were not provided with the information.

It was only on July 18<sup>th</sup>, 2014, just about one week before the report was due, that we received some of the electronic data we had requested, but it was still incomplete, which presented substantial challenges.

For these reasons the current report is labeled “preliminary.”

## **QUALIFICATIONS OF APPRAISERS**

The above valuation was formulated by VWA.

VWA has brought together a select team of the most qualified expert appraisers and consultants offering its clients specialized services and highly personalized attention coupled with utmost confidentiality.

This team has been assembled by Victor Wiener, who for over twenty years served as Executive Director of the Appraisers Association of America. During his tenure and afterwards, Mr. Wiener identified and worked with those experts now employed by VWA.

Those appraisers who worked on this Report are:

### **Victor Wiener: Principal author and signatory**

Currently an appraiser in private practice, Victor Wiener served as executive director of the Appraisers Association of America for 21 years. Prior to that he worked for several auction houses in Rome, London, and New York, including Sotheby's and Christie's, where he was Director of the fine arts department in Rome. A trained art historian, Mr. Wiener has worked at several museums including the Metropolitan Museum of Art in New York and the Victoria and Albert Museum in London. He has published extensively, and is co-editor and a principal contributor to *All About Appraising: The Definitive Appraisal Handbook* (2003), and a co-author of *An Underwriter's Guide to the Valuation of Art, Antiques & Collectibles* published by the Inland Marine Underwriters Association, 2001. He has also taught the appraisal of fine and decorative arts at The New School, Baruch College, and New York University (NYU), where, for over twenty years, he has been an adjunct assistant professor on the faculty of the Appraisal Studies Program. At NYU, he teaches courses on the Legal and Ethical Responsibilities for Appraisers and on the USPAP; he previously taught IRS Rules and Regulations. Mr. Wiener is one of the few instructors of the USPAP with a specialty in personal property to be certified by the Appraisal Standards Board of the Appraisal Foundation, the organization “authorized by Congress as the source of appraisal standards and appraiser qualifications” (*cf.* text on Appraisal Foundation's logo).



Mr. Wiener has served as an expert witness in several high-profile art cases including matters concerning the estates of Andy Warhol and Louise Nevelson, and litigation concerning two of the most important works by Damien Hirst. He has been employed by several agencies of the Canadian government; by the Department of Justice as an expert witness in the litigation, *Charles Malette v. H.M. the Queen*; by the Canadian Cultural Property Export Review Board (CCPERB) in the determination of value of property seeking certification as culturally relevant to Canada; and by the Canadian Revenue Agency (CRA) in the review of donated items to Canadian cultural institutions. Mr. Wiener has written extensively on the application of blockage discount and other tax-related matters.

His work in valuing highly valuable property is extensive. He has served as an expert witness in *Stephen and Elaine Wynn v. Those Certain Underwriters at Lloyds, London et al.*, in which the value of the damaged painting *Le Rêve* by Picasso was the matter at issue; at the time *Le Rêve* the most expensive painting ever to have been sold (\$139 million). Subsequent to the settlement of the Wynn case, he published an extensive article on the determination of loss in value for highly valuable works of art. This article is cited in Mr. Wiener's CV, which has been appended to this document. (See Attachment A.)

#### **David Shapiro: Valuation and report preparation**

David Shapiro brings to his appraisals a significant background as an art historian with specific expertise in contemporary art. The founding editor of the online contemporary art publication *Museo* and founding owner of Museo Publications, a business providing expert editorial solutions for art historical publications, Mr. Shapiro has played critical editorial roles in recent editions of a number of industry-leading higher education art history titles including Janson's *History of Art* and Marilyn Stokstad and Michael Cothren's *Art History*. His interview with Jeff Wall was published in the Museum of Modern Art's book *Jeff Wall: Selected Essays and Interviews* (MoMA).

An Associate Member of the Appraisers Association of America, Mr. Shapiro's appraisals are compliant with the USPAP. He holds a BA in Art History from Columbia University and a certificate in Appraisal Studies in Fine and Decorative Arts from New York University. He studied Modern Art in the PhD program in Art History at the Graduate Center of the City University of New York and has taught courses of Art History at the Fashion Institute of Technology, Pratt Institute, Parsons The New School for Design, and The Museum of Modern Art.

Mr. Shapiro has worked with VWA on several significant donation, damage and loss, and collateral loan appraisals.

#### **Shaun Cooper: Appraisal coordination and financial review**

Shortly after receiving his Master of Arts degree from L'Université Libre de Bruxelles in 1993, Shaun Cooper began working for a private Manhattan art dealer before opening a gallery specializing in twentieth-century decorative arts. As a dealer, Mr. Cooper has participated in international art fairs, bought and sold works privately and at public auction, and has developed a deep understanding of the market. His studies include a Bachelor of Arts degree from McGill University in Montreal, a certificate in French Language and Civilization from L'Université de Paris IV, and a certificate in Appraisal Studies in Fine and Decorative Arts from New York University. He is certified in the USPAP and is an Associate Member of the Appraisers Association of America.

### **Charles Wong, LL.M.: Review and compliance**

Charles Wong, LL.M. provided technical and administrative review and assistance for the methodology used in this report. He has had over 20 years' commercial legal experience working as in-house counsel for listed corporations both in Australia and in the United Kingdom. He has co-authored, with Victor Wiener, an article on "The Role of Appraisers in the Process of Authentication and in Other Related Valuation Issues" and another article that has been published on the Chubb Collectors website concerning "Why Auction Estimates are not Appraised Values." Mr. Wong is certified in the USPAP.

### **Robert Leeds: CEO Silar Advisors, LP.: Technical, statistical, and financial analysis**

Robert Leeds has over 25 years of investment experience largely focused on all aspects of large pools of underlying assets. His responsibilities included capital commitments, asset valuations, asset pricing, and advising clients on multi-billion dollar asset transactions. Prior to forming Silar Advisors in 2006, he spent 13 years at Goldman Sachs & Co in institutional sales and mortgage trading, 3 years at Nomura Securities responsible for the firm's residential whole loan trading platform, where he built a profitable conduit that acquired and securitized over \$20 billion in loans, and approximately 2 years at Fortress Investment Group as a Managing Director and partner in the Drawbridge Special Opportunities Fund, LP. Mr. Leeds is a 1985 graduate from Hamilton College.

### **Zhang Yi: Art market analysis**

Zhang Yi began his career in the financial industry from 2006 to 2014 in HSBC and Goldman Sachs. Meanwhile, he headed the Research Department of HIHEY.COM, an e-commerce company specializing in art from 2011 to 2014. From 2012 to 2014, he was also the head of the Art & Finance Department in the China Art Market Research Center, where he was in charge of art economic research, art and finance research, and art wealth management.

Zhang Yi was a visiting lecturer at the Central Academy of Fine Arts in 2013 for "Art and Finance." He co-authored "China Art Market Research Report" and "China Art

Market Annual Report” from 2011 to 2013. Since 2013, he has been a consultant on the Chinese art market for the annual “TEFAF Art Market Report.” His writings and interviews on contemporary art and economics have appeared in *China Culture Daily*, *Bazaar Art*, *China Auction*, and *Bloomberg Weekly*.

Zhang Yi received an MA from the Art Administration Department of the Central Academy of Fine Arts in 2013 and BAs in Finance from Wuhan University and International Economics and Trade from Huazhong Agriculture University.

### **Jannette Barth, Ph.D.: Discount analysis**

Jannette Barth, Ph.D. is the principal of J.M. Barth & Associates, Inc. Holding degrees from The Johns Hopkins University and the University of Maryland, Inc., Dr. Barth has worked in the field of economic research, demand analysis, and econometrics for over 30 years. She has held positions as Chief Economist, New York Metropolitan Transportation Authority, and as Consultant and Account Manager, Chase Econometrics/Interactive Data Corporation.

Dr. Barth has extensive experience in the economic analysis of the art market. As a practicing economist with a Certificate in Appraisal Studies in Fine and Decorative Art from New York University and a Certificate in American Art from Sotheby’s Institute of Art, Dr. Barth’s work in the art market ranges from the analysis of particular segments of the art market for litigation support to the analysis and calculation of blockage discount for galleries and artists’ estates.

Dr. Barth has taught economics courses at both the graduate and undergraduate levels and was a Senior Lecturer in the MA in Art Business program at Sotheby’s Institute of Art. She regularly lectures on art as investment and blockage discount, including seminars at appraisal conferences and for staff of Internal Revenue Service Art Appraisal Services.

### **James Callahan: Valuation, Asian art**

James Callahan is Director of Asian Art for the auction house James D. Julia, Inc. He has expertise on wide-ranging aspects of Asian art, including Chinese, Japanese, Korean, Vietnamese, Khmer, Thai, Burmese, Ottoman Turkish, Armenian, Arabic, Persian, and Indian objects. He is also an appraiser of arms and armor, nineteenth-century European and American furniture and decorative arts, and eighteenth- to twentieth-century fine silver. A frequent lecturer and consultant to museums, historical societies, and independent art groups nationwide, Mr. Callahan has worked with the Brooklyn Museum to bring to auction over 200 important pieces of Southeast Asian art from the collection of Samuel Eilenberg.

### **Jason Christian: Valuation, photography**

Jason Christian is a photography specialist and founding principal of the appraisal firm Christian | Reilly. Since 2004, he has appraised photographs for insurance, donation, and estate purposes for clients including the estates of Ansel Adams, Brett Weston, Cole Weston, Ernst Haas, and Yousuf Karsh and institutions including the San Francisco Museum of Modern Art; the Museum of Fine Arts, Boston; and the Los Angeles County Museum of Art. Mr. Christian holds an M.A. from Dartmouth College and a B.A. from the University of California, Santa Cruz. He maintains a current USPAP certification.

### **Sarah Cox: Valuation, ancient art**

Sarah Cox has worked as a researcher of ancient art at the New York gallery Fortuna Fine Arts, Ltd. since 1999. A Romanist with specialist expertise in numismatics and mosaics, she has published and lectured extensively on a range of subjects in these areas. Dr. Cox holds a Ph.D. in Classical Studies from Columbia University and a certificate in Appraisal Studies from New York University. Her professional affiliations include membership in the Appraisers Association of America, the Archaeological Institute of America, the Society for Classical Studies, L'Association Internationale pour l'Etude de la Mosaïque Antique, and the Society of Architectural Historians.

### **Louise Devenish: Valuation, furniture and decorative arts**

Louise Devenish is an appraiser and dealer specializing in American and European decorative art from the sixteenth century to the present. She is a consulting appraiser for the online marketplace 1stdibs as well as the founding principal of the professional arts community Devenish Group LLC.

Ms. Devenish has taught for over twenty years at both New York University, in the Appraisal Studies program, and at Parsons The New School for Design. She lectures widely at museums and historical societies and has served as the keynote speaker at the International Antiques Fair in Chicago. As an antiques dealer, she has participated in the International Confederation of Dealers at the Metropolitan Museum of Art. Ms. Devenish is recognized by the Appraisers Association of America as a Certified Appraiser in American and European decorative art. Her appraisals are compliant with the USPAP. She is also a member of the LAPADA: The Association of Art & Antique Dealers.

### **Marina Whitman: Valuation, Islamic art**

Marina Whitman is an independent appraiser specializing in Islamic art. She has taught art history at Pennsylvania State University and John Carroll University and has curated for the Lowe Art Museum, University of Miami. She has published articles on Islamic ceramics. Dr. Whitman holds a Ph.D. from New York University's Institute of Fine Art

with a certificate in Museum Studies. She is an Accredited Property Appraiser from the International Society of Appraisers.

## **THIS REPORT**

### **Content of this report**

In conjunction with the steps taken in fulfillment of the assignment as listed and discussed below, VWA determined and settled with the Client the appropriate type of appraisal report in keeping with the USPAP.

As part of this process and in fulfillment of this assignment VWA also determined:

- the type and definition of value to be used;
- the appropriate marketplace(s) in which this value should be determined; and
- the valuation approach most appropriate for this report.

These are discussed in this report.

In conformity with the USPAP as discussed below, this Report is subject to extraordinary assumptions, hypothetical conditions, and limiting conditions as set out below.

### **USPAP conformity**

As cited above, this Report has been prepared in accordance with the USPAP. USPAP comprises standards promulgated by the Appraisal Foundation in Washington, D.C. as the major codification of appraisal standards for all appraisal disciplines. USPAP is both recognized by Congress (as stated on the Appraisal Foundation logo) and generally accepted in the United States and abroad.

All significant information affecting the valuation conclusions has been disclosed within the body of the report. Other, secondary, information to which the report may refer is retained in a work file for reference purposes.

The methodology VWA has employed to support its valuation conclusions is in conformity with a USPAP Appraisal Report as discussed below.

## **SCOPE OF WORK**

### **Inspection and research**

#### ***Inspection***

Normally one would hope to have a physical inspection of the Subject Property, although USPAP does not preclude production of an appraisal report without physical inspection. [NB the Internal Revenue Service frequently performs audits of appraisal reports without performing physical inspections].

Due to the time constraints for the production of this report, a formal inspection of the Subject Property was not possible.

However, in late April 2014, Mr. Wiener made a trip to Detroit especially to view the collection.

### ***Research***

In the process of preparing this report, VWA conducted extensive research:

- VWA reviewed numerous database records for auction sales.
- Within a short amount of time, VWA consulted numerous books concerning sections of the Subject Property. Due to the time restrictions of producing the Report, VWA is continuing to work on the bibliography and will continue to update the production of documents upon which VWA relied to form the opinions in this Report, as necessary.
- VWA consulted dealers of material similar to works of art contained in the Subject Property.
- Of significant importance, VWA reviewed reports submitted by others. These include:
  - Expert Report of Vanessa Fusco of Christie's Inc., dated July 8<sup>th</sup>, 2014 (***CHRISTIE'S REPORT***)
  - Expert Witness Report of Michael Plummer of Artvest Partners, dated July 8<sup>th</sup>, 2014 (***ARTVEST REPORT***)
  - Fair Market Value Appraisal written by the Winston Art Group, dated March 25<sup>th</sup>, 2014 (***WINSTON REPORT***)
- VWA also reviewed an undated listing of insurance values prepared by the Detroit Institute of Arts (***DIA INSURANCE LIST***) and the Houlihan Catalogue.

These documents are discussed in detail below.

## **EXTRAORDINARY ASSUMPTIONS, HYPOTHETICAL AND LIMITING CONDITIONS**

Most appraisal assignments are subject to extraordinary assumptions, hypothetical conditions, and limiting conditions.

An extraordinary assumption is defined in USPAP, 2014-15 edition, substantively as an assumption which the appraiser has every reason to believe is true at the time the report is written, but if subsequently this is proven not to be the case, then the valuation conclusions reached by the appraiser should be reviewed and may be subject to change (see USPAP, 2014-15 edition definitions).

A hypothetical condition as defined in USPAP, 2014-15 edition, is:

That which is contrary to what is known by the appraiser to exist on the effective date of the assignment results, but is used for the purpose of analysis.

A limiting condition is a factor that defines and limits the type of work an appraiser is able to do within the agreed-upon appraisal assignment and scope of work deemed necessary for fulfillment of the assignment.

Extraordinary assumptions, hypothetical conditions, and limiting conditions are frequently interlinked.

The specific extraordinary assumptions, hypothetical conditions, and limiting conditions associated with this assignment are listed and discussed below.

### ***Extraordinary assumptions***

The extraordinary assumptions that VWA has taken in fulfillment of this assignment are as follows:

1. That the Subject Property has been accurately described within the DIA catalogue and that it will be recognized as such within the marketplace determined to be most appropriate within the context of this report.
2. That the Subject Property is in relatively good condition unless otherwise noted by the DIA or by other reliable sources.
3. That the Diego Rivera mural, *Detroit Industry*, can be removed successfully and that if necessary it would be removed by highly trained technicians with specialization in the removal of wall paintings.
4. That the charts given in Exhibit E of the Artvest Report are accurate.

5. In addition, VWA was told to assume that the Subject Property was not the subject of any encumbrances.

### ***Hypothetical conditions***

There are no hypothetical conditions connected with this report.

### ***Limiting conditions***

There are numerous limiting conditions connected with the production of this report. Among the most important ones are:

1. That VWA had less than two weeks to produce an appraisal report for approximately 60,000 works of art.
2. That VWA was provided unsearchable data by the DIA. Instead of providing a searchable database, similar to the type to be found on the DIA website, we were provided with 17,000 pages of a partially catalogued inventory of images, which could not be sorted, and each file was labeled "Unknown, American" instead of the true author and origin of the work of art.
3. That no file entries in the records provided note whether a work of art is signed or not. This in turn compromises an independent determination, based on the records, of whether an attribution is tenable or not. As such, VWA has taken an extraordinary assumption that the attributions in the files are indeed tenable since these attributions were made by the DIA's highly qualified curatorial staff.
4. In addition, the catalogue entries provided contain incomplete entries concerning dates or other inscriptions, significant publications and exhibitions, all of which can influence value. Thus the lack of time to research these matters ourselves constitutes a limiting condition.

## **VALUATION**

### **TYPE OF VALUE USED FOR THIS REPORT: MARKETABLE CASH VALUE**

The type of value deemed most appropriate for this report is Marketable Cash Value which is defined as:

The value realized, net of expenses, by a willing seller disposing of property in a competitive and open market to a willing buyer, both reasonably knowledgeable of all relevant facts, and neither being under constraint to buy or sell." (*All About Appraising: The Definitive Appraisal Handbook* [Appraisal Institute of America



and The Educational Foundation of the Appraisers Association of America, 2003], p. 219)

The reason for the selection of this value is that this Report was originally commissioned by ACG whose purpose was to have proper appraisal documentation to generate a loan for the DIA collection.

Under such circumstances a value which is net of transaction costs is appropriate since, if the borrower were to forfeit on loan payments, a lender would confiscate the collateral (art in this case) and sell part or all of the property used as collateral to satisfy the debt. Consequently an appropriate value is one which reflects how much the lender would actually receive net of commissions rather than how much the sales agent for the lender, such as an auction house, would receive inclusive of commissions.

It should be noted that other values are used in other reports.

The Winston Report states that they used "fair market value" (*FMV*) which is defined in the body of the report as:

...the price that property would sell for on the open market between a willing buyer and a willing seller, with neither being required to act, and both having reasonable knowledge of the relevant facts. Note that in this case fair market values are inclusive of buyer's premiums. (Winston Report p. 3)

Presumably within the Winston Report definition, commissions due to the sales agent such as the auction house are also included as is commonly the case in the definition of fair market value.

The Christie's Report states that they have used fair market value, but they do not provide a definition of this value. In addition, they do not consider any buyer's premium, which is an essential important part of fair market value. (Christie's Report, p. 6)

The Artvest Report does not define which value was used.

The DIA Insurance List does not state which value has been used. Presumably it used Retail Replacement Value (*RRV*), which is the most common value used when art is scheduled on an insurance policy.

Retail Replacement Value is generally defined as:

"A property's highest value, usually for insurance purposes, that is defined as the highest amount in terms of U.S. dollars that would be required to replace the property with another of similar age, quality, origin, appearance, provenance, and condition within a reasonable length of time in an appropriate and relevant market. When applicable, sales and/or import tax, commissions, and or premiums are included in this amount." (*Appraising Art: The Definitive Guide* [New York: Appraisers Association of America, p. 438])

## **APPROACH SELECTED FOR THIS REPORT: THE MARKET COMPARISON APPROACH**

USPAP requires appraisers to determine which valuation approach is necessary:

The three standard approaches to valuation cited in USPAP are the Market Comparison Approach, the Cost Approach, and the Income Approach. (See USPAP 2014-15, Standards Rule 7-4)

VWA has selected, as the most appropriate approach for this type of valuation, the Market Comparison Approach (*MARKET COMPARISON APPROACH*), in which the Subject Property has been compared to other similar and like objects which have sold or have been offered for sale as closely as possible to the Effective Date of Valuation stated above, in the marketplace designated as most appropriate.

## **THE OTHER APPROACHES CONSIDERED**

VWA has also considered the other two traditional approaches to valuation, the Cost Approach (*COST APPROACH*) and the Income Approach (*INCOME APPROACH*).

The Cost Approach obliges the appraiser to take into consideration the amount of money required to re-fabricate the Subject Property if the Subject Property is of a type that lends itself to re-fabrication. The Subject Property could not be re-fabricated if for no other reason than the fact that there are numerous artists, many of whom are no longer living.

The Income Approach for the valuation of the Subject Property has been rejected as inappropriate to this assignment because the Subject Property, to the best of our knowledge, has no history of having been used primarily to generate income.

## **THE MOST APPROPRIATE MARKET FOR VALUATION**

Works of art can be sold in a variety of marketplaces. The two most prominent marketplaces are the public auction marketplace and the private gallery marketplace. For the purposes of this appraisal, VWA believes the auction marketplace to be the primary venue for valuation purposes of the Subject Property.

With this in mind, VWA has examined both marketplaces extensively. However, it should be noted that dealer representations are often anecdotal and are frequently hard to verify since such sales are confidential, and even redacted versions of sales receipts are difficult to obtain unless by court order. In addition, private dealers in the United States feel confined by the confidentiality provisions of the Gramm-Leach-Bliley Act of 1999.

In addition, of primary consideration is the fact that in a loan situation, if the borrower such as the City were to default on loan payments, a lender would most likely want to sell the collateral as quickly and efficiently as possible. While consignment to private dealers may be an option for some of the works constituting the public property, the vast majority of the works would most likely fetch higher prices at public auction in a prominent sale highlighting the curatorial excellence of the DIA collection. Consequently, the most appropriate marketplace, without doubt, would be a public auction where large market exposure and competitive bidding would take place.

## **VALUATION METHODOLOGY**

In this section the general methodology followed by VWA is set forth and observations are made by contrasting the valuation methodology perceived to have taken place in the other reports.

### **General methodology followed by VWA in determining value as reflected in the Report**

As previously stated, VWA is comprised of a number of specialists, each highly qualified in the sector of valuation to which they are assigned primary responsibility (see credentials of appraisers given above).

While each specialist performed initial valuations for specific sectors, these valuations were only a point of departure. After the valuations were submitted to VWA they were reviewed by the team; in some cases further research was performed after review. In brief, the methodology for determining value by VWA is organic taking into consideration points made by specialists and comments made by colleagues. Final valuation figures are arrived at after intense review.

By nature of the assignment, the VWA appraisal has set about to value the entire collection of the DIA operating under highly limiting conditions as stated above and specified further below.

As stated above, the VWA team did not have the opportunity to view the Subject Property physically although the DIA collection was viewed by Mr. Wiener in situ before he was offered the opportunity to appraise the collection.

As such the team had to work with whatever resources were available including:

- Compromised data submitted by the DIA as discussed above.
- For the most, part thumbnail photographs taken from the DIA website. Although some additional photographs were supplied electronically by the DIA, the order in which they were supplied was so chaotic as to make them virtually unusable. The quality of the images used was not uniformly high resolution.

- VWA did not have the opportunity to discuss the collection with curators.
- VWA was not given access to the DIA files. As a result, information about significant publications and exhibitions, both of which can influence value was not shared by the DIA.

As a result of these limitations our report is classified as “preliminary.” However, VWA feels secure in setting forth the values in this report in keeping with the nature of a preliminary report and in keeping with the requirements of USPAP.

### **General methodology followed by Christie’s in determining value as reflected in the Christie’s Report**

As is common with Christie’s, the Christie’s Report was done by a team of appraisers, each member coordinated by Vanessa Fusco of the Appraisal Department.

As stated in the Christie’s Report, team members visited Detroit on numerous occasions, reflected in a billing of \$65,000 for expenses.

The appraisal, as stated in the Christie’s Report, used fair market value, but since no commissions were included in the range of values ascribed, the ultimate values are more in keeping with marketable cash values – although no accommodation was made to the fact that a seller’s commission would normally be due to the auction house, this latter point may be moot since auction houses frequently do not charge important consignors, such as the DIA, a seller’s commission.

However, what should be noted is that while using a range in value, as is common in auction estimates, Christie’s assigned an extremely wide range, often as wide as over 100% between the low and the high value. While this may be understandable for objects where a value may require substantive analysis and the appraiser is not willing or able to perform such a task, it is hardly the norm in appraisal reports. As such, this factor places the Christie’s Report in a position in which its credibility is called into question.

At no point does Christie’s state that the Christie’s Report is compliant with USPAP. While USPAP does allow for a range in value, such a wide range is definitely outside the norm.

### **General methodology followed by Michael Plummer of Artvest in determining value as reflected in the Artvest Report**

The Artvest Report was written by Michael Plummer, who signed it.

Mr. Plummer is not an appraiser. The Artvest Report is labeled an “Expert Witness Report” but since he states values which he formulated for the major part of the report, this would qualify as an appraisal under USPAP (see USPAP definitions, 2014).

Although the Artvest Report relied upon the input of experts, some of whom are known to VWA to be of high quality, the nature of many of the DIA pieces required the benefit of consultation by a committee for quality control.

While Mr. Plummer uses appraisers as consultants, the use of the data they have supplied is entirely his. As such the Artvest Report lends itself to uncertainty as an appraisal report.

The Artvest Report is not compliant with USPAP, nor does it state that it is. Some of the consultants are USPAP certified but they only supplied undefined values for Mr. Plummer to use as he saw fit. Unlike VWA, the values stated in the Artvest Report are not the products of team consensus since each value carries the name of the consultant who supplied it. (See documents appended to the Artvest Report).

It is not the intention of this Report to serve as an “Appraisal Review” as defined in Standard 3 in USPAP; as such a full description of how the Artvest Report is not compliant with USPAP is not given here but can be supplied if requested by the court.

VWA has mentioned the methodology the Artvest Report used determining individual or unit values – i.e. using individual consultants to make those determinations on their own.

The major part of the Artvest Report discusses general valuation considerations Plummer feels one should take into consideration in determining the total value of the DIA collection. It is VWA’s intention to address these considerations as they appear within the methodological framework VWA uses to make its own determination of the total value of the DIA collection.

It should be mentioned at this point that the only appraisal reports VWA has seen so far in which the total value of the DIA collection is discussed are this Report and the Artvest Report. The other reports reviewed just address individual objects in the DIA collection but not the whole collection.

### **THE IMPORTANCE OF THE DIA COLLECTION**

The DIA is one of the largest and most significant art museums in the country, comprised of approximately 60,000 works of art from a range of cultures throughout the globe. It is one of the country’s few encyclopedic art museums, representing the art of most major cultures from early ancient history to the present. The collection includes works of ancient Greek, Roman, Mesopotamian, and Egyptian art, as well as Islamic, African, Chinese, and Oceanic art and major collections of American art, European art, Modern art, and decorative art. It contains masterpieces by such artists as Pieter Bruegel,

Caravaggio, Pablo Picasso, Auguste Rodin, Mark Rothko, Jacob van Ruisdael, Vincent van Gogh, and Andy Warhol. DIA also houses the armor collection of newspaper baron William Randolph Hearst.

As noted, the scope and breadth of the collection is extraordinary. Although it may hold fewer objects than other museums, the refined curatorial selection is unparalleled for a museum of its size.

The collection was assembled at a time when Detroit had funds beyond what most museums had and was able to attract curators of worldwide renown. A review of the holdings invites comparison with the holdings of the best of other museums anywhere in the world. This is an overwhelming valuation factor which serves as the proper orientation for this appraisal report.

The museum was established in 1885 as a result of the initiatives of another newspaper magnate, James Scripps, and his manager William H. Brearly. Among the institution's numerous prominent donors have been many leaders of the automobile, including the Ford family, particularly Edsel Ford, the Dodges, and the Firestones. Other important donors include Governor and U.S. Senator Russell A. Alger, U.S. Senators James McMillan and Thomas W. Palmer, businessman Dexter Ferry, distiller Hiram Walker (Canadian Club Whiskey), industrialists Christian Buhl, Charles Lang Freer, and John Stoughton Newberry, and department store magnates C.R. Mabley, Cyrenius A. Newcomb, Sr., and Robert Hudson Tannahill of the Hudson's Department Store fortune, who, upon his death, bequeathed a particularly large and important collection of European art, including Modern masters Paul Cézanne, Edgar Degas, Paul Gauguin, Pablo Picasso, and Georges Seurat. A pioneer in collecting taste, DIA was the first public collection in the United States to include works by Van Gogh and Henri Matisse.

The DIA collection is housed in 658,000 square feet of gallery space in over 100 galleries in a 1927 Beaux-Arts building designed by Paul Philippe Cret, with a portion of the collection kept in storage. Among the most celebrated rooms in the building is the Rivera Court, which contains Mexican painter Diego Rivera's monumental frescoes *Detroit Industry*, a cycle that commemorates the work that fueled the ascendancy of a great American city.

## **THE EFFECTS OF SELLING MUSEUM AND CELEBRITY ART**

### **Museum provenance**

It is apparent that works of fine and decorative art, and other collectibles from museums and other significant collections perform much better at auctions than similar objects lacking notable provenance. This tendency manifests itself in the sales of objects that differ greatly in kind and value, similarly in major auctions of international importance, and small regionally scaled auctions.

An indication of the substantial potential premium that would be given to the collection of the DIA collection, were it to be auctioned, can be found in the Cleveland Museum of Art's January 2011 sale of two dozen European old master paintings. In an article in that city's paper, *The Plain Dealer*, Steven Litt wrote of this sale, the largest sell-off from its collection in more than a half-century (...):

From a market perspective, **collectors love things with a museum provenance** and hopefully, [the sale] will do well for the museum," said Christopher Apostle, a Sotheby's senior vice president and director for old master paintings in New York. (Steven Litt, "Cleveland Museum of Art to auction 32 old master paintings at Sotheby's," *The Plain Dealer*)

In fact, the sale performed 45% better than expectations, earning \$450,000 more than the high estimate. (Steven Litt, "Cleveland Museum of Art earns more than expected from Sotheby's sale of selected old master paintings," Feb. 1<sup>st</sup>, 2011). The very strong performance of the sales from the Cleveland Museum of Art, no less at a moment when the art market was still in recovery from the financial crash of 2008-09, attests to the premium that buyers are willing to pay for works from great collections such as major museums.

In a 2007 article "Christie's is Cagey about Maier Museum Provenance, Discloses the Rose," Lee Rosenbaum identifies the same tendency:

**Auction houses always tout museum consignments** in their presale press releases, because of the **cachet and higher market value that distinguished provenance confers**. (Lee Rosenbaum, "Christie's is Cagey about Maier Museum Provenance, Discloses the Rose," *CultureGrrl*, November 1<sup>st</sup>, 2007)

In a report for Christie's Features, Joshua Glazer and Alexis Glashot discuss this tendency as well:

Deaccessioning sales, which occur infrequently and tend to be part of a carefully tailored collection-management strategy, **provide private clients with a unique opportunity to acquire works with impeccable museum provenance and often a substantial history of research and publication**, from some of the most hallowed and prestigious collections in the world. (...) **Our June New York Sale saw the successful sale of 11 works from the Metropolitan Museum of Art**, sold to benefit the acquisitions fund of the European Paintings department. The group, which was 100% sold, was led by Hubert Robert's *The Ruins* and *The Old Bridge*, which realized \$1,874,500 (£1,219,310). (Joshua Glazer and Alexis Glashot, *Market Barometer: Old Master Paintings*, spring 2012)

Jesse Hamlin identifies the same tendency in a discussion of a sale of works from the M.H. de Young Memorial Museum:

A couple of thousand objects were put up for auction after being culled from the collections at the M.H. de Young Memorial Museum in Golden Gate Park and the California Palace of the Legion of Honor. About 95 percent of them were snapped up at Butterfields in San Francisco and online yesterday and Monday in auctions that included objects from the Art Institute of Chicago and other institutions. Most sold for more than their estimated value.

"That's very good news," said museums Director Harry Parker. **"I think there was a premium paid for objects that have a museum provenance. That gives them a cachet."** (Jesse Hamlin, "Museum pieces auctioned / De Young, Legion items get top dollar," San Francisco Chronicle, June 27<sup>th</sup>, 2011)

The premium paid for a museum provenance can also be seen in the sale of Rufino Tamayo's *Watermelon Slices*. In an article for *Blouin Art Info*, Judith H. Dobrzynski predicted the effect of the MoMA provenance, which proved true; the painting sold for \$2,200,000, which was \$200,000 above the high estimate. Dobrzynski wrote:

Give Sotheby's credit for salesmanship: today, announcing **the sale of a painting by Rufino Tamayo, which is being deaccessioned by the Museum of Modern Art**, the auction house called *Watermelon Slices* "a major work...depicting one of his signature themes."

Estimated at \$1.5 million to \$2 million, it will be in the Nov. 16 auction of Latin American Art. Carmen Melian, the Latin American expert at Sotheby's, said "This is one of the most important Tamayo watermelon paintings to appear on the market for several years. **Collectors are sure to gravitate towards a work of this iconic subject matter from an important period that also boasts such distinguished provenance.**"

(Judith H. Dobrzynski, "MoMA To Sell Tamayo, With Acquisition Policy Implications," *Blouin ArtInfo*, October 19<sup>th</sup>, 2011)

In a 2011 article for *The New York Times*, Carol Vogel notes the tendency of museum provenance to be used as a sales tool:

It is clear from the Impressionist and modern art catalogs that a number of museums, eager to clean house, are willing to take a gamble on the market, hoping some of today's new buyers — predominately from Asia, Russia and the Middle East — **will be impressed by a museum provenance. For auction house experts, that's a compelling sales tool.** (Carol Vogel, "A Bouquet of Offerings to Test Uncertain Waters," *The New York Times*, October 28<sup>th</sup>, 2011.)



Vogel made a similar point seven years earlier, addressing the impact of MoMA provenance:

The top seller was Pollock's "No. 12, 1949," one of his classic drip paintings. Five bidders fought over the oil on paper, which sold to a telephone bidder for \$11.6 million, **well above its \$7 million high estimate and a record for the artist.** Practically no drip paintings are available; **this one came with an exceptional provenance: the Museum of Modern Art had owned it for 52 years.** (Carol Vogel, "Contemporary-Art Bidding Tops \$102 Million in Sales," *The New York Times*, May 12<sup>th</sup>, 2004)

Suzanne Muchnic noted the same tendency in an article the same year, identifying the capacity of museum provenance to have a significant effect.

"Ultimately a painting sells based on its merits -- the quality of the work, whether it stems from the artist's greatest period, the condition of the work, whether it has been on the market recently," Eykyn says. **"But clients like to feel vindication of their taste. To be able to say a work has been in the collection of the Museum of Modern Art the last 40 or 50 years achieves that."**

Amy Cappellazzo, Christie's chief of Post-War and Contemporary art, also has MoMA consignments -- a small drip painting by Jackson Pollock, valued at \$5 million to \$7 million, and a painting of a cow by Jean Dubuffet, expected to fetch \$2.5 million to \$3.5 million.

**"The MoMA provenance adds cachet for sure,"** she says. **The relatively obscure Anderson Fine Arts Center in Anderson, Ind.** -- which hopes to reap \$1.8 million to \$2.5 million from the sale of Edward Ruscha's 1964 painting "Damage," donated to the center in 1972-- **doesn't have the same effect. But the Anderson name can't hurt,** even though some of the proceeds are likely to fund operations not condoned by the American Assn. of Museums' code of ethics. (Suzanne Muchnic, "Art; Banking on big names; More than \$500 million worth of art is up for auction in New York. Quality is important, but illustrious ownership can add real value to the sale price," *Los Angeles Times*, May 2<sup>nd</sup> 2004)

The effect of museum provenance on the market is known to be so significant that some dealers take great measures to ensure that works that they market have it. Joy Lo Dico wrote of this phenomenon in a recent article for the *London Evening Standard*:

This February Olyvia Kwok was in the sales room at Sotheby's for its Contemporary Art Auction. Two other Basquiats had sold well above their estimates already but, when it came to the Water-Worshipper canvas, the

bidding was pedestrian. The auctioneer's hammer was falling when Kwok, dubbed the Chinese It-girl of the art market, put in one last bid for £2.49 million. She got her Basquiat, and below the expected price. "I think it was a bargain," she told a journalist as she left the salesroom, and reckoned it would double in value over the next 18 months (...)  
As for the Basquiat and the Twombly, Kwok has a plan. "I got the Basquiat for \$4 million. It is now insured for \$12 million. **We are going to place the painting in a museum so it will have a better provenance, because everyone likes things with more academic value.** Once placed we will talk to Basquiat experts, find out some more information, someone will write about it, and **we will put it back on the market for different collectors.**" (Joy Lo Dico, "I look at artists like a commodity balance sheet: art dealer Olyvia Kwok on picking paintings and being sued by Sotheby's," *London Evening Standard*, July 3<sup>rd</sup>, 2014)

The tendency for museum provenance to elevate value can be found in art of diverse type. A 2012 article for BBC News, "Vase used as doorstop raises \$1.3m at auction," demonstrates the phenomenon to take place in the sale of Chinese art:

Dr. Tao Wang, who was recently appointed head of the Chinese Works of Art Department at Sotheby's New York, said he was "thrilled" with the result of the first auction he has attended there. "We saw exceptional demand across the sale which drove the total to such heights," said Wang. **"Collectors from around the world were drawn to high-quality pieces with distinguished provenance, particularly that of museums."** ("Vase used as doorstop raises \$1.3m at auction," BBC News, September 14<sup>th</sup>, 2012)

In a *Washington Post* article "Museum Quality," Jane Friedman notes that the Baltimore Museum of Art provenance will benefit the sale of pre-Columbian works:

Museums, like homeowners, occasionally need to winnow their possessions. But **when a museum's goods are put back on the market, their value usually is increased.**

Weschler Auctioneers and Appraisers, the Washington-based auction house, this weekend will sell more than 130 lots of pre-Columbian as well as African and Native American objects, most of which were in the collections of the Baltimore Museum of Art.

**"These works have been authenticated, and what we call provenance always affects the value,"** says Frederick Lamp, the museum's curator of the arts of Africa, Asia, the Americas and Oceania. (Jane Friedman, "Museum Quality," *The Washington Post*, October 1<sup>st</sup>, 1998)

The same effect can be seen in the sale of Western antiquities, as addressed in Elspeth Moncrieff's 2006 article "Antiquities Sold to Pay New Art Bonanza in *The Daily Telegraph*:

The ongoing high-profile trial in Rome of Marion True, former antiquities curator at the Getty, on suspicion of conspiring to buy illegally excavated works of art for the museum, has uncovered a labyrinth of dealers, curators and collectors allegedly involved in handling illicitly excavated antiquities.

The trial has put the wind up everybody, and curators can no longer turn a blind eye to provenance. **Buying publicly at a vetted auction in which each item has a published museum provenance gives the buyer complete security - so these works are particularly desirable.** (Elspeth Moncrieff, "Antiquities Sold to Pay New Art Bonanza," *The Daily Telegraph*, November, 28<sup>th</sup>, 2006)

The elevating effect of museum provenance is not even particular to high-value fine art. In an article for *Forbes*, Missy Sullivan addresses this point:

You don't have to be in the market for a Monet or a Manet to benefit. If you look closely, you'll find museum property sprinkled among sales of almost every category (...) Bonus: When you buy a museum piece at auction, it comes free of sales tax.

**A museum provenance can exercise a halo effect on mediocre work, giving it a higher hammer price.** You can safely assume a museum piece has been well cared for and researched. (Missy Sullivan, "Yard Sale of the Gods," *Forbes*, December 24<sup>th</sup>, 2001)

The tendency of museum provenance can be seen in the sale of historical memorabilia. Steve Campbell discusses the museum provenance effect in a sale of Robert E. Lee memorabilia:

In 1867, Lee donated the items to help out an orphanage in Baltimore, Quinn said. The items were eventually bought by Civil War collector William Beverly Bristol Jr. of Baltimore, who died in 1999. That year, his heirs loaned the items to the National Park Service's Arlington House, Lee's former family home that became the Arlington National Cemetery. But an illness in the owners' family owners forced them to put the items up for auction.

When Kathy Huxhold of Muncie, Ind., first contacted Quinn about selling the items collected by her uncle, he told her they held enormous potential. **"It was Robert E. Lee and we had museum provenance - this had the power to create a perfect storm at auction,"** Quinn said, noting that 1,500 bidders signed up for the bidding. "We had estimated it at about \$20,000 but the bidding started at \$25,000. When it ended at \$55,000, it

was a tear-jerking moment to do something for a client,” he said. (Steve Campbell, “Prolific Fort Worth Civil War collector scoops up rare Robert E. Lee items,” *The Star Telegram*, February 2<sup>nd</sup>, 2014)

### Celebrity sales

The effect of museum provenance is not unlike that of celebrity provenance, which tends to augment value dramatically.

The Elizabeth Taylor sale at Christie’s New York on December 3<sup>rd</sup> to 17<sup>th</sup>, 2011 made \$156,756,576. Every item that was offered sold. The evening sale of Taylor’s jewelry alone achieved \$115,932,000, becoming the most valuable jewelry auction in history. Seven new world auction records were established during the sale including price per carat for a colorless diamond and for a ruby. These record prices owed in large part to the golden provenance of having been part of Taylor’s collection.

This provenance contributed to unexpectedly high achieved prices for the fine art in Taylor’s collection as well.

For example, Vincent van Gogh’s landscape painting *Vue de l’Asile et de la Chapelle de Saint-Rémy* illustrates the celebrity effect. Relatively modest in scale, bland in color, and prosaic in composition, this painting was offered with an ambitious estimate of £5,000,000 - £7,000,000 (\$7,885,000 - \$11,039,000) at Christie’s London in February 2012. It sold for £10,121,250 (\$15,991,575), more than doubling the low estimate, despite its relative deficiencies; this high realized price was in large part determined by the provenance. The celebrity factor can be discerned when comparing this painting to other relatively minor van Gogh oil paintings of landscapes that sold in the same general time period. For example, the slightly inferior painting by van Gogh *Pont de Clichy* sold for vastly less money (\$6,130,919) at Koller in Zurich in June 2013. And the superior painting by van Gogh *Parc de l’hôpital* sold for less (\$13,302, 947) in June 2010.

The collection of Yves Saint Laurent and Pierre Berge was also incredibly successful, setting numerous records including the biggest auction ever held in Europe. The auction made 374.4 million euros (\$477 million with fees), dramatically surpassing the estimate of 200 million euros to 300 million euros. Nearly 96% of the lots sold, an extremely high sale rate. That success of this auction, which was the largest-grossing auction of a private collection, particularly in relation to its estimates, attests to the premium that collectors are willing to pay for work that has impressive provenance.

The capacity for celebrity provenance to draw extremely high prices at auction is perhaps most evident in the auction of Jacqueline Kennedy’s personal memorabilia, which fetched astronomical prices in the 1990s. Collectors paid \$772,500 for her golf clubs, and \$211,500 for her fake pearls, among numerous other such prices, all of which attest to the premiums that collectors will pay for provenance. (See James Barron, “Reporter’s Notebook; Oohs, Aahs and Millions in Frenzy to Buy Camelot,” April 26<sup>th</sup>, 1996.)

Damien Hirst sold 100% of his lots on September 16<sup>th</sup>, 2008 at Sotheby's London, setting the record for a one-artist auction the day after Lehman Brothers collapsed. The sale, which made \$200.7 million, soaring past the high estimate of \$177.6 million is another example of the power of celebrity status. (See "Maev Kennedy, £111 Damien Hirst Total Sets Record for One-Artist Auction," *The Guardian*, September 16<sup>th</sup>, 2008.)

The Christie's Report is silent on the importance of the museum provenance which is related to the celebrity provenance factor discussed above.

### **Sale of any century**

As art appraiser Elizabeth Gaidos says:

I was Assistant Curator of American Art at the DIA many years ago. The collection is a world treasure, not just the subject of a regional dispute. A museum collection of this stature is a compilation of the curatorial expertise and donor contributions of decades. It has a life and character developed over time and is not merely an assemblage of individual properties." (posted on LinkedIn July 18th, 2014)

The sale of the entire contents of the DIA would be unprecedented in scope. Given the extremely high quality and curatorial consistency of the DIA collection, even an auction sale of selected masterpieces from the museum would perform better than any sale in history, including major sales centuries ago, such as the dispersal of royal treasures of the French Revolution or the Walpole sale to Catherine the Great in the eighteenth century.

In view of this extensive evidence, it is instructive to contrast the comments of the Artvest Report on this issue. Not only does the Artvest Report appear not to take into consideration the exalted factor of provenance but it belittles it.

The Artvest Report says:

General gifts and other museum acquisitions often involve property with little or no sales value and/or scholarly or historic value only. Also in many instances donors give entire collections, which include poor to mediocre property side-by-side with good property. (Artvest Report p. 19)

While this may or may not be the case, what the Artvest Report ignores is that when and if museums receive gifts of low value, they more frequently than not sell unwanted objects soon after receiving them.

Such sales are condoned by the American Association of Museums provided that the proceeds of such sales are given to an acquisitions fund and are not dispersed for other purposes.

This is a fact that the Artvest Report ignores when discussing the recent sale by the Delaware Museum of Art of a William Homan Hunt painting, illustrated in the Artvest Report. (See Artvest Report, pp. 32-34)

There is also a major valuation flaw in the analysis of works under \$5,000 in both the Artvest Report and the Christie's Report.

The Artvest Report states:

For property with a value below \$5,000 I attributed an effective value of \$0, as is my opinion that the cost of cataloguing, handling, administering and finding buyers for this property will be equal or greater than the cost of selling it. For that reason this is a price level of property that Sotheby's and Christie's, under normal circumstances try to avoid selling. (Artvest Report p. 19)

The Artvest Report accepts without question Christie's classification of these works. However, Christie's did not provide a list of the works under \$5,000 with illustrations, and so, the user of their appraisal report has no way of verifying whether these works are indeed under \$5,000. In light of the fact that Christie's has not valued these objects, the total number of objects valued in their report may be closer to 1,500 rather than approximately 2,700, which they say they have valued. Yet, the Artvest Report accepts these numbers without question and incorporates them, and in so doing, skews the results.

Not only is this point fallacious for its refusal to account for the major cumulative value of works under \$5,000 in the DIA collection, but it is untrue in regard to the business practices of Sotheby's and Christie's, both of which sell works under \$5,000. Many of these works, such as his Polaroid photographs offered in Christie's online "Eye Candy" sale have estimates as low as \$1,000-\$2,000.

Sotheby's is also working in the lower end of the art market, having recently announced a partnership with eBay for online sales. (op cit. Carol Vogel and Mike Isaac, "A Warhol with Your Moose Head? Sotheby's Team with EBay," *New York Times*)

The Artvest Report also implies that selling museum works which are not condoned by professional associations result in lower realized prices, as evidenced by the Delaware Museum sale which took place in London, referenced above, which most likely was due to an aggressive estimate by Christie's. (See Artvest Report, p. 33).

Ironically, on July 14<sup>th</sup>, 2014, a few weeks after the Delaware Museum sale, the *New York Times* published a story of how an Egyptian statue de-accessioned from the Northampton Museum in England made approximately \$27 million in London above its estimate of \$7-11 million, despite the fact that both the Egyptian government, local residents and British museum officials tried to block the sale on "moral grounds" (using the terminology of the *New York Times*).

One of the most egregious errors in the Artvest Report is the treatment of Diego Rivera's *Detroit Industry* frescoes. The Artvest Report says that the frescoes "cannot be removed with cutting them off the wall and inflicting serious damage, and incurring significant cost." [*sic* – he presumably means "without cutting them..."]. While of course there would be costs associated with moving the frescoes, it is certainly possible, and it is fully in keeping with the regulations of National Park Service, which organization has named the murals a national hallmark and explicitly noted that this designation "does not shield the property from ownership changes or prevent an owner from making any other changes they wish"; a review process is in fact only needed if federal funding is to continue (See "Iconic Diego Rivera mural at DIA named National Historic Landmark," *Detroit Free Press*, Apr. 24<sup>th</sup>, 2014)

In fact, frescoes are commonly moved from their original sites to museums. There is currently an exhibition in Ravenna, Italy titled *L'incanto dell'affresco* ("The Charm of the Fresco: Detached Masterpieces from Pompeii to Giotto, from Correggio to Tiepolo"). The show is comprised of 110 detached frescoes from antiquity to the nineteenth century. (See Attachment G: Article on *L'incanto dell'affresco esco*)

It is common for museums to display detached frescoes in this country as well. One prominent example of this is Domenico Ghirlandaio's detached fresco *Saint Christopher and the Infant Christ* in the Metropolitan Museum of Art. At the same institution, one can see several entire rooms of detached frescoes from villas such as Boscoreale and Boscotrecase; these paintings, buried under the lava of Mount Vesuvius, suffered a fate far worse than surgical modern processes that necessarily attend the transport of major frescoes, and yet, they are in very good condition and set up in situations that approximate the original rooms. The removal of frescoes in a setting such as a major museum today would be performed with state-of-the-art technology that would leave the works in essentially perfect condition in a new location.



Domenico Ghirlandaio, *Saint Christopher and the Infant Christ*

The relocation of room-scaled works is not particular to frescoes. Entire rooms are regularly moved without damaging effect. Consider Whistler's Peacock Room, which was moved from Freer's Detroit mansion to the Freer Gallery of Art in Washington, DC. Consider, similarly, Louis Comfort Tiffany's Tiffany Chapel at the Morse Museum in Winter Park, Florida, which was moved three or four times prior to its current installation. Museums sometimes move entire buildings to great distances; consider the Temple of Dendur, which was moved from Egypt to the Metropolitan Museum of Art. With such examples in mind, the reconstruction of Rivera's masterful frescoes in a comparable museum is entirely plausible.

Later in the Artvest Report, in the section for individual valuations, Betty Krulik says "the works would be destroyed if they were removed from the building, therefore the value is 0 OR the value of the real estate." As discussed above, there is no indication that the works would be destroyed or even damaged if they were to be moved, and therefore these works, major masterpieces by the most important Mexican artist in history, have a value far in excess of zero. And since, as discussed above, the Rivera murals are of a class of property that can be relocated with relative ease, their value is not the value of the real estate.

### **STATE OF THE CURRENT ART MARKET**

The time constraints of producing this preliminary and summary report preclude a detailed analysis of the state of the art market at present. However, a few general comments are in order.



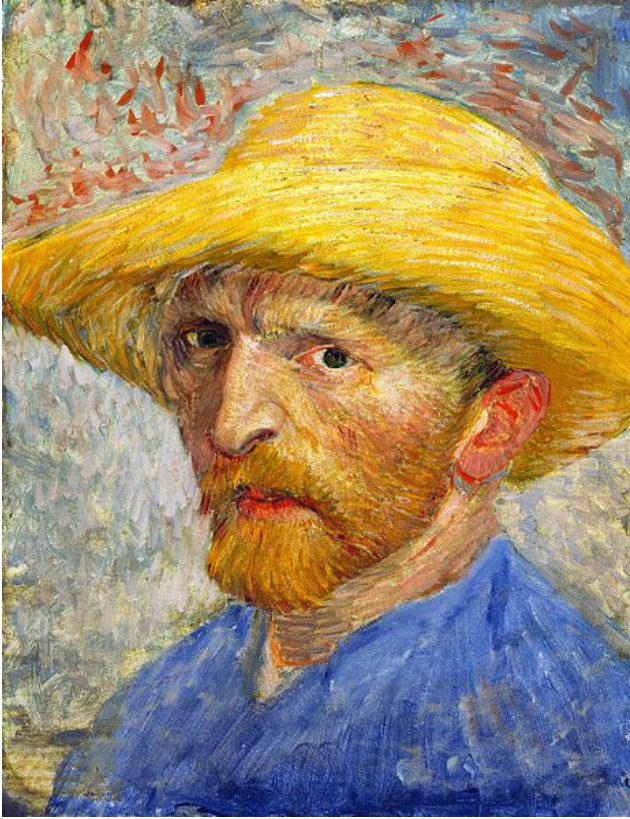
At the moment, as in the past, the art market tends to be strong for works of art of significant quality. The curatorial care which the DIA has exhibited over during the last century in particular has produced an extraordinary collection of world renown as stated by Elizabeth Galdos above.

Among the masterpieces in the DIA collection are:



Pieter Bruegel, *The Wedding Dance*

This major painting by Bruegel depicts a wedding festivity from his typical bird's-eye vantage point with a characteristic plethora of detail. It is among the best surviving examples of later Northern Renaissance painting and among this master's most important paintings.



Vincent van Gogh, *Self-Portrait with Straw Hat*

This self-portrait typifies one of the most important genres for the legendary Post-Impressionist. The self-portrait has a three-quarters pose, psychologically expressive gaze, pungent saturated color, and long dappled brushstrokes, all of which are characteristic of the artist's self-portraits.



Rembrandt van Rijn, *The Visitation*

This is a major religious painting by Rembrandt van Rijn, the most important Dutch painter of the seventeenth century. The architecture is similar to that of Rembrandt's masterpiece, *The Nightwatch*, painted around the same time but cut and altered in the nineteenth century. *The Visitation* remains unaltered, a very important consideration in valuing.



Frederic Church, *Cotopaxi*

This painting exemplifies the representation of the sublime in nineteenth-century American landscape painting. It epitomizes the artist's signature panoramic vantage



point, and stands out even from comparably well-painted Church paintings in its brilliant color.



Caravaggio, *The Conversion of the Magdalen*

The painting was made for Caravaggio's first major patron, Cardinal del Monte. Its realistic portrayal of ordinary people as models, dramatic approach to storytelling and strong value contrasts embody what a collector would expect in Baroque painting. The brilliantly painted elliptical mirror and its reflection served as an important point of departure for Baroque still life painting, and the gestures influenced many Baroque artists such as Georges de La Tour.



Mark Rothko, *Orange Brown*

This work is a classic example of Mark Rothko's style, in which large minimally modulated rectangular shapes float in an abstract space. This style of painting, called color-field painting, is a sub-style of Abstract Expressionism, and Rothko was its most prominent practitioner.



Henri Matisse, *The Window*

This painting features a classic subject for Matisse, namely an interior with a window. Characteristic of his painting style, flat planes of color are emphasized. The DIA was the first public collection in the United States to include a Matisse.



Pablo Picasso, *Melancholy Woman*

This is a significant Blue-Period painting by Pablo Picasso. The works for this series, his first mature body of work, feature cool colors, melancholy subjects, and significant attention to linear elements, all of which are present in this painting. As such, this is one of the most important paintings of Picasso's Blue Period.



Snake-dragon, symbol of Marduk, patron God of Babylon panel from the Ishtar Gate

This extremely rare glazed-brick relief is from the Ishtar Gate, a major Neo-Babylonian structure built by King Nebuchadnezzar II in honor of the Babylonian gate Ishtar. This relief depicts the god Marduk in the guise of a chimerical mixed creature. Only two other museums in the world have dragons from the Ishtar Gate; this is the only dragon in the United States.



Andy Warhol, *Double Self Portrait*

This large-scale self-portrait treats central themes in Warhol's Pop art oeuvre, namely celebrity, repetition, and the visual language of popular culture. The two-part format and the heightened color palette are signature for the artist.





Edgar Degas, *Danseuses au foyer (Dancers in the Green Room)*

This painting features ballerinas, the most important subject for Impressionist painter Edgar Degas. The asymmetrical composition of this early painting reflects his newfound interest in Japanese prints. The subject is accessible to contemporary collectors.



Henry Fuseli, *The Nightmare*

This painting is, by far, Fuseli's most important work. It is a defining monument of Romanticism, embodying the concept of the irrational and its connection to imaginative forces. It is a precocious painting, looking forward to themes that would occupy many artists in the nineteenth and twentieth centuries. It anticipates Surrealism, an important painting style for contemporary collectors. It has a place in psychology textbooks and art history textbooks alike.



James Abbott McNeill Whistler, *Nocturne in Black and Gold – The Falling Rocket*

This painting is the most important of Whistler's Nocturnes, a series of muted landscapes painted with limited palettes. This work, which closely looks forward to modern abstraction more than any other work in the series, was the subject of a major controversy and libel suit involving a foremost critic of the day, John Ruskin, who accused Whistler of "flinging a pot of paint in the public's face."

With a collection of masterpieces such as the twelve examples cited above, it is clear that any DIA sale would excite world attention no matter what generalized statements one could make about market performance within any one particular sector. A sale of such extraordinary works of art would transcend any generalized comments one might make because in point of fact there will have never been a sale comparable to that of the Subject Property.

Notwithstanding this more obvious observation, the Christie's Report did not comment on the state of the art market.

The Artvest Report mentions the topic, but it does not discuss in depth the prominence of the DIA collection.

Instead, the first part of the Artvest Report details observation on the current art market; a major source cited in the Artvest Report is the TEFAF Art Market Report prepared by art economist Clare McAndrew. (**TEFAF REPORT**)

Chinese art economist, Zhang Yi also worked on the TEFAF Report and is credited with this in the report. Mr. Zhang who also works with VWA was asked to comment on the observations made in the Artvest Report regarding the TEFAF Report. The Review of Expert Witness Report of Michael Plummer, Artvest Partners, dated July 8<sup>th</sup>, 2014, Submitted to VWA on July 25<sup>th</sup>, 2014, Prepared by Zhang Yi (**ZHANG REPORT**) is appended to this report. (See Attachment B.)

The Zhang Report states that the Artvest Report misstates or obscures the points raised and conclusions of the TEFAF Report.

Generally speaking, the conclusions that the TEFAF Report makes are based on heterogeneous mixed consignor sales which in many cases suffered by a paucity of excellent objects; in other words, sales which have profiles significantly different than what would be the case if there were a sale of the excellent holdings of the DIA.

Consequently, while the general observations made in the Artvest Report may or may not apply to mixed consignor sales of objects of uneven quality, a DIA sale would not fit such a profile and, as such, it is inappropriate to compare such a sale with what has taken place during the past sale season.

### **THE ISSUES OF SUPPLEMENTS AND DISCOUNTS WITHIN THE CONTEXT OF MASS APPRAISALS**

In the event that a valuation is predicated on the premise that a large group of similar and like items were to valued at one time in a hypothetical sales construct, USPAP Standard 6, under Mass Appraisals, instructs the appraiser to consider whether the value of the whole mass may be different than the sum of its parts.

Taking into consideration this valuation instruction, one should determine whether a supplement or a discount to a normal value would be appropriate.

### **SUPPLEMENTS**

Based on our discussion above, one would be justified in determining that an increase in value would be appropriate due to the extraordinary quality of works of art in the DIA collection.

In point of fact, such a sale would be the sale of any century.

VWA has taken a conservative view and have added conservative supplements to various sector of the DIA collection, which are discussed below. VWA feels justified in doing this because the “sale of any century” would consist of consistently superior items which

are distinctly different from the items which would be found in a mixed-consigner sale such as the ones in the TEFAF report cited by the Artvest Report.

The reason VWA has not applied an across-the-board supplement is because such supplements are hard to quantify.

However, it should be mentioned that Mr. Wiener was required to quantify a glamor supplement in the DeBekessy case, cited in the attached CV, in which Christie's sold a distinguished collection of eighteenth-century French furniture and decorative arts without citing provenance, publication and exhibition history, resulting in lower prices realized for the consignor than if such important factors had been cited.

Neither the Christie's Report nor the Artvest Report address the possibility of including a valuation supplement due to the DIA provenance.

## **DISCOUNTS**

VWA has not applied a valuation discount factor to the DIA collection, which one would normally do when valuing such a large collection of similar and like items, albeit in many diverse collecting categories, to be sold at one time. Given the nature of the DIA collection, it is unlikely that the entire collection would be sold at one time. Instead, a more likely hypothetical sale scenario would be one that takes place over time.

Alternatively, under the loan scenario presented by ACG and discussed in the Houlihan Catalogue, the DIA collection would not be sold at all, providing, of course, that the debtor would be able to repay the loan. The only way any of the works of art would be removed or sold would be if there were to be a loan default. Consequently the collection would not be valued as an organic whole or "mass" to use the terminology in USPAP Standard 6.

The Christie's Report does not address the issue of the appraisal of a mass.

The Artvest Report addresses the issue of applying a blockage discount, although it would appear that the Artvest Report ultimately rejects this, presumably because it is a draconian solution (although this point, in our opinion, is not entirely clear in the Artvest Report narrative). (See Artvest Report, pp. 27 ff).

The Artvest Report offers a number of different scenarii for calculating discounts which could be applied to value all 60,000 plus art holdings of the City.

These scenarii are articulated in a variety of tables. (See Artvest Report Tables 4, 5, 6, 7 pp. 28 – 7)

Economist Jannette Barth, Ph.D was asked to opine on the Artvest Report's view of blockage discount as it applied to the DIA and the supporting data use for the conclusions in the tables set forth in the Artvest Report.

Dr. Barth's conclusions are stated below and elaborated upon in the attached The Review of Expert Witness Report of Michael Plummer, Artvest Partners, dated July 8<sup>th</sup>, 2014, Submitted to VWA on July 24<sup>th</sup>, 2014, Prepared by Jannette M. Barth, Ph.D., Pepacton Institute LLC (**BARTH REPORT**) is appended to this report. (See Attachment C.).

In brief, Dr. Barth opines that most, if not all, of the discounts applied in the Artvest Report are unsustainable because of reliance upon unsupported data. The Barth Report goes through each discount that the Artvest Report applies and shows that the data is either lacking or inconsistent with the conclusions reached. As such, the Barth Report concludes that the Artvest Report is unreliable.

With this in mind, one can see that the Artvest Report puts forth its own discount calculations stated in the conclusion, resulting in a discount scenario in which the DIA collection would fetch between \$1.1 and \$1.8 billion "in the highest value scenario." (See Artvest Report, p. 48).

The Artvest Report also dismisses all expressions of interest by three potential purchasers and one potential lender as reported by Houlihan (See Artvest Report pp. 39-40).

While VWA did not have direct access to the three potential purchasers, according to Houlihan, Poly International Auction House expressed interest in purchasing all Chinese works for up to \$1 billion, Yuan Capital expressed interest in purchasing 116 pieces for \$895 million to \$1.473 billion, and Catalyst Acquisitions/Bell Capital Partners expressed interest in purchasing the entire collection for \$1.75 billion. VWA did have access to ACG, who offered to provide a \$2 billion loan.

VWA asked Ian Peck of ACG to comment on the way the Artvest Report characterized his offer to which he replied:

The Artvest Report, and more specifically the sections referencing ACG and its proposal to monetize the art collection of the DIA, is predictably skewed and misleading. Our proposal, which was submitted April 9, 2014, laid out interest rate ranges and loan proceed estimates in hopes of having collaborative discussions with the DIA and bankruptcy administrators. All relevant estimates were bracketed within the proposal to signify that we were open to discussion and analysis. ACG is confident that any loan against the collection for the purposes of enhanced relief to creditors will price at the lower end of the aforementioned interest rate range thereby rendering Mr. Plummer's cost estimates in Section 70 a. inaccurate. In section 70 e. Mr. Plummer again utilizes his inflated numbers to calculate debt service amounts. ACG is prepared to look at all options to provide non burdensome terms in the early years of the loan i.e. interest taken out of loan proceeds, PIK structures, etc. To be clear, ACG's proposal has no language

included that requires sales of any of the DIA collection. Further, the absence of any fees in the proposal that would reward ACG if any sales did occur should mitigate any offensive claims asserted by Mr. Plummer in section 70 g. The spirit of our proposal was and continues to be a willingness to work with all sides to find a mutually agreeable solution, thereby protecting a national treasure and allowing it to remain in Detroit whilst effecting enhanced recovery to creditors.

### **VALUATION DETERMINATION: METHODOLOGY**

1. VWA valued 387 items with a low value of \$3,092,419,700, high value of \$4,040,303,800 and an average value of \$3,566,361,750.
2. The Christie's Report, the Artvest Report, and the Winston Report valued 596 works that VWA did not value.
3. VWA believes the values of the 596 works valued by the third parties stated above are generally too low.
4. The total of the average values of the 596 works arrived at by the third parties above was \$311,370,325.
5. Combined, VWA and other third parties valued 983 works for a total average value of \$3,877,732,075 (*See Attachment J: Step 2 Attachment*).
6. Of 17,178 DIA insurance values, 16,388 works were not valued by any of the third parties.
7. Many of the DIA insurance values were arrived at during the last decade or prior (see table "Overview of Age of DIA Insurance Value For Those Works that Have DIA Insurance Value and No Third Party Values")
8. VWA determined that a market percentage appreciation is appropriate for 16,338 of the DIA insurance values because the average weighted age of the values is 13.0 years (see chart "Overview of Age of Insurance Value For Those Works That Have DIA Insurance Values and No Third Party Values").
9. In order to determine a market appreciation rate, VWA first cross-referenced DIA insurance values to works that VWA valued and compared results. There were 317 works that had insurance values that VWA had valued.
10. With respect to the 317 pieces that had both insurance values and VWA values, VWA calculated the weighted value to be \$3,566,361,750 and calculated the average age of the DIA's insurance value to be 5.9 years old with an initial DIA insurance value of \$2,200,811,839. (*See Attachment L: Step 3 Attachment*).

11. VWA calculated the percentage change between the VWA values and the initial DIA insurance values and used that percentage as the market appreciation rate to be applied to the 16,388 works to arrive at current market value for the 16,388 works.
12. The current market value for the 16,388 works is \$758,888,249. (*See Attachment L: Step 3 Attachment*)
13. For the remaining works, VWA developed a pricing matrix based on average sales price of artworks by Sotheby's and Christie's by sales department for 2013 by using the chart from Exhibit E in the Artvest Report, "Sotheby's and Christie's Unsold Rates by Sector – 2013."
14. For reasons previously discussed in this report, particularly the unparalleled provenance of the DIA works, and the examples of recent celebrity sales, VWA believes that if the DIA collection ever were to be offered for sale at public auction, the buy-in rate for unsold lots in the categories would be essentially zero.
15. A premium or discount was applied to most of the DIA categories.
16. When appropriate, premiums were applied to categories within the pricing matrix to compensate for factors including the strength of many individual market sectors and the high collectability and rarity of the DIA works in those sectors.
17. When appropriate, discounts were applied to categories in the pricing matrix to compensate for less collectible works of art.
18. The values of the remaining 42,854 DIA works were calculated by taking the average sales price described above (see above) and also applying the premium or discount where applicable.
19. The total value of the remaining 42,854 DIA works was determined to be \$3,512,612,030.
20. VWA has considered that an error rate in the DIA data would affect results. Until VWA can consult with the DIA on quality control issues, VWA is unable to adjust for such errors.
21. The preliminary MCV grand total for the works in the DIA collection is \$8,149,232,354 and was determined by adding (1) the total value of works in the DIA collection valued individually by VWA, (2) the total value of works in the DIA collection valued individually by independent third parties (not including VWA), (3) the projected value of works not covered by clauses 1

and 2 in this paragraph but have aged DIA insurance values which VWA subsequently estimated for market appreciation, and (4) the total values of remaining works which were valued using the pricing matrix. (See Attachment H: Methodology Step by Step Chart)

22. All values were reviewed and adjusted by internal committee.

## **CONCLUSION**

In arriving at a determination of the value by VWA of the entire holdings (approximately 60,000 works of art) of the DIA, the following points should be stressed:

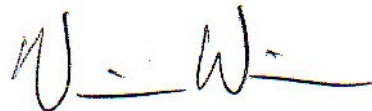
1. The above appraisal report is to be considered as a preliminary report of a summary nature. All notes included in the work file may or may not have been included in the report. Clearly only when they are of truly determinative importance have such notes been cited, in keeping with the report's definition as both preliminary and summary.
2. There have been at least three other appraisal reports reviewed by VWA which have been produced in conjunction with the above cited litigation. Two of these reports, the Winston report and the Christie's report, take into consideration only a small segment of the DIA collection. The Report and the Artvest Report are the only two reports that attempt to value the entire DIA collection.
3. Of these two reports, the Report is the only report issued in compliance with the Uniform Standards of Professional Appraisal Practice.
4. Of these two reports, this Report is the only report issued by qualified appraisers. While the Artvest Report may have used qualified appraisal consultants that report was issued by Michael Plummer who is not an appraiser.
5. Furthermore, as evidenced by the CVs attached to the Artvest Report, neither Mr. Plummer nor his appraisal consultants show any significant museum training.
6. At least two of the leading appraisers responsible for the Report have significant museum training – i.e. Victor Wiener who holds a Certificate in Museum Training issued jointly by the Metropolitan Museum of Art and the Institute of Fine Arts, NYU and David Shapiro, who has worked in and with museums in a variety of capacities.
7. This Report is the only report that takes into consideration in a prominent way the great importance of the art holdings of the DIA. This is an important



valuation factor, which has been almost totally ignored in the other appraisal reports. In fact Artvest appears to denigrate the DIA holdings by saying it contains many items of low value, which may have been dumped into the museum collection by donors.

8. VWA has had only two weeks in which to issue the preliminary report.
9. Because the data supplied was compromised we were obliged to engage Silar Advisors to attempt to sort the data and assist in calculations. This is an on-going process but enough progress has been made at this point to render credible results.
10. Because much of the analysis of the Artvest Report is dependent on work done by Clare McAndrew and her associates for the TEFAF Report, as well as economic projections. VWA consulted with Zhang Yi, a co-author of the TEFAF Report; we also consulted with Janette Barth, a noted economist to comment on these sections. The Zhang Report and the Barth Report are appended to the Report. In sum, both these authorities take issue with statements made in the Artvest Report.
11. While the Report does make a number of economic projections, the methodology employed and the limitations under the time constraints are disclosed fully within the body of this report. Such full disclosure is not obvious to us within the text of the Artvest Report.
12. Under the limitations cited above and within the Report and within the nature of the type of preliminary report delivered, with all its disclosures, it is VWA's opinion that the Report has arrived at credible results. Such is the overriding principle of USPAP which stresses that appraisers must strive to maintain "public trust" and perform assignments with "objectivity, independence and without bias." VWA strives to maintain those principles.

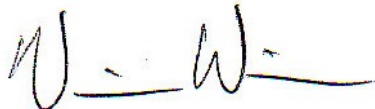
Executed this 25th day of July, 2014, in New York, New York.

A handwritten signature in black ink, appearing to read 'V. Wiener', with a horizontal line extending to the right.

Victor Wiener

**USPAP Appraisal Certification:**

- The statements of fact contained in this report are true and correct.
- The reported analyses, opinions and conclusions are limited only by the reported assumptions and limiting conditions and are the impartial and unbiased professional analyses, opinions and conclusions of the appraiser.
- The appraiser has no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
- The appraiser has no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- The appraiser's engagement in this assignment was not contingent upon developing or reporting predetermined results.
- The appraiser's compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- The appraiser's analyses, opinions, and conclusions were developed and this report has been prepared in conformity with the *Uniform Standards of Professional Appraisal Practice*.
- Any person who has provided significant personal property appraisal assistance to the person signing this certification is listed in the body of the report.
- The appraiser has the appropriate experience and level of competence to appraise the property which is the subject of this report and the qualifications of all who have worked on this report are stated both within the body of the report and in the *curriculum vitae* of the principal appraiser which is appended to the report.
- While the appraiser attests to the descriptions of property contained in this report, this appraisal report is not to be considered to be a statement of authenticity or a warranty of the subject property, and is limited by the extraordinary assumptions stated with inches. However, careful review of all scholarly and market sources have not revealed any doubt about the authenticity of the subject property as of the date of this report, unless specifically stated.



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Victor Wiener for  
Victor Wiener Associates, LLC  
July 25th, 2014

## ADDENDUM

### CORRECTIONS TO REPORT AS OF AUGUST 20, 2014

The Report has been corrected to account for the following errors noted as of the above date:

- Obvious typographical errors of spelling and syntax.
- The following transcription errors:
  - VWA identified 20 works that should not have been included in Step 2. VWA deleted each of these works from the Step 2 Attachment (Attachment J), and those with DIA insurance values were included in Step 3 (*see* Attachment L) and the others were added to the pricing matrix in Step 4 (*see* Attachment M). The Methodology Step by Step Chart (Attachment H, and reproduced on page 3), the Step 2 Attachment Supplement (Attachment K), the explanation of the valuation methodology on pages 45-47 and the valuation conclusions on page 3 have been updated to reflect the corrected number of units and average values.
  - The DIA Insurance List includes an Asian manuscript, *Perfection of Transcendent Wisdom in Eight Thousand Verses* consisting of 501 pages. The DIA Insurance list gave each of the 501 pages a different accession number, and the insurance value of \$300,000 for each page of the manuscript. This is an obvious error, as \$300,000 is an appropriate insurance value for the whole manuscript, but not for each page. Thus, the \$300,000 insurance value for this work should have been listed only once on the DIA Insurance List, but was instead repeated 501 times. The Step 3 Attachment (Attachment L), the Methodology Step by Step Chart (Attachment H, and reproduced on page 3), the explanation of the valuation methodology on pages 45-47 and the valuation conclusions on page 3 have been updated to reflect the corrected number of units and average value, accounting for \$300,000 as the value of this work, only once.
  - It is VWA's opinion that the DIA Insurance List may include additional instances of the same mistake of listing the insurance value for one object multiple times. This would be impossible to verify without a detailed physical inspection of each work in the DIA Collection; however, in order to account for this possibility, VWA applied an additional discount of 3.5% to calculate the Grand Total, Projected Sum of Average DIA Insurance Value listed on the Step 3 Attachment (Attachment L), and updated the Methodology Step by Step Chart (Attachment H, and reproduced on page 3), the explanation of the valuation methodology on pages 45-47 and the valuation conclusions on page 3 to reflect the

corrected, discounted value.

- As a result of these and other mistakes identified on the DIA Insurance List, VWA corrected the total amount of DIA insurance values in paragraph 6 of the explanation of the valuation methodology on page 45.
- The definitions of Christie's Report, Artvest Report and Winston Report in Attachment K were corrected to conform to the definitions in the Report.
- The formatting of Attachments H – M was fixed to make those attachments more readable.

## INDEX OF ATTACHMENTS

A: Curriculum Vitae of Victor Wiener

B: Zhang Report

C: Barth Report

D: Select Slides from Uniform Standards of Professional Appraisal Standards course material written by the Appraisal Foundation

E: DIA Inventory Page, Missing Photograph Example

F: DIA Inventory Page, Mislabeled “Unknown, American” Examples

G: Article on *L'incanto dell'affresco*

H: Methodology Step by Step Chart

I: Step 1 Attachment

J: Step 2 Attachment

K: Step 2 Attachment Supplement

L: Step 3 Attachment

M: Step 4 Attachment

**Attachment A**

**Curriculum Vitae of Victor Wiener**

**VICTOR WIENER**  
**201 W. 89TH St., 11D**  
**New York, N.Y. 10024**  
**(646) 206 3992 PHONE**  
**(212) 873-5218 FAX**  
**victorwiener@aol.com**

**Independent Appraiser and Art Consultant, 2004-present:**

CEO and director of Victor Wiener Associates, LLC the successor company to Wiener Wolf Associates, LLC, an international firm of independent specialist appraisers and art advisors drawn from professional associations, specializing in insurance appraisals, damage and loss appraisals, tax appraisals, equitable distribution appraisals, appraisals for collateralized transactions, and art market advice for private collectors and financial institutions. The firm's diverse group of expert appraisers specializes in all aspects of fine arts and decorative arts and has an additional specialty in the appraisal of photography, photo archives and audio visual related material.

Appraisers Association of America, Inc., New York, N.Y.

**Executive Director, 1982- 2004:**

CEO of international organization of 1200 members engaged in the profession of appraising art. Responsible for implementation of all Association programs including: monthly newsletter and journal as editor; government liaison as listed below; analyses and monitoring of art market to report to members and professional and general public; design and supervision of computerized appraisal referral service; implementation and management of Association's educational program including monthly seminars, national conferences, professional travel program, and ad hoc lecture series on the art market under the auspices of the AAA's parallel educational foundation, the Appraisal Institute of America; implementation and administration of Association's public relations program, including preparation of all press releases; design and supervision of criteria for prospective members; review of member's appraisals and source of advice to members on appraisal problems; general liaison with art community: i.e. collectors, dealers, auction houses and appraisers.

Sotheby's Appraisal Company: New York, N.Y.

**Consultant, 1981-1982:**

Responsible for preparation of appraisals for old master and 19th century paintings for clients requesting insurance appraisals, estate appraisals and appraisals for donation purposes.

New York, NY

**Art Broker, 1981-1982:**

Specializing in the sale of fine art, including old masters and 19<sup>th</sup> and 20<sup>th</sup> century paintings and sculpture.

La Cassa di Risparmio: Rome, Italy

**Consultant, 1978-1980:**

Resident consultant for old master, 19th and 20th century paintings. Responsibilities included: supervision of monthly auction sales; advisor to consignors and collectors; development of new client base; recommendations to bank officers on the purchase of works of art for the bank.

Rome, Italy

**Private dealer and art broker, 1978-1980:**

Specializing in the sale and acquisition of fine and decorative arts.

Christie's: Rome, Italy

**Director, Fine Arts Department** 1974-1978:

Responsible for 10-12 sales annually of paintings, drawings and prints. Advisor to consignors and collectors in Italy and throughout Europe. Preparation of all fine art catalogues, verifying attribution and prices of all works offered. Liaison with branch offices throughout Italy and with general office in London.

Colnaghi, Rome, Italy

**Research Assistant to the Director**, 1973-74.

**University Teaching Positions:**

1990 – present: Adjunct Assistant Professor New York University Appraisal Studies Program, School of Professional and Continuing Studies. Courses include: Art Law; IRS Rules and Regulations and Uniform Standards of Professional Appraisal Practice.

1987: Instructor, Art Dept, Baruch College, New York. Course on Basic Appraisal Methodology.

1985: Instructor, Baruch College, New York, School of Continuing Education. Course on Basic Appraisal Methodology.

1985: Instructor, The New School, New York. Course on the Art Market and Appraising.

1970-1973: Instructor, Art History, Finch College International Study Program: Rome, Italy

Development of a curriculum utilizing the resources of Rome as a point of departure for the study of the connoisseurship of paintings and sculpture and the basic principles of architectural history.

**Governmental Research, Development, and Testimony:**

2009: Member of working group of 5 experts retained to develop and recommend new standards for donation appraisal reports concerning audio, visual and related photographic material to be considered by the Canadian Cultural Properties Export Review Board for potential Canadian tax deductions.

1990: Established with the Resolution Trust Corporation a national database of appraisers to help in the liquidation of assets of failed Savings & Loan Institutions.

1986: Testimony submitted to the House Ways and Means Committee, Subcommittee on Oversight, concerning the IRS Art Advisory Panel. Testimony published by the Government Printing Office with the proceedings of the Hearing.

1985: Testimony before the IRS and Treasury on the new IRS regulations for donations of personal property to charitable institutions.



**Governmental Research, Development, and Testimony (cont'd) :**

1985. Expert witness for the Treasury Dept. in the United States of America v. Jarelco, Inc.. As a result of this action, the Treasury Dept. was able to reclaim more than \$50 million in lost revenue.

1984: Participant at the meeting of IRS and Treasury officials and invited representatives of the appraisal profession to discuss the ramifications of the new legislation and rules regarding donations of personal property to charitable institutions.

1983: Testimony on appraising before the House Government Activities Subcommittee, chaired by Rep. Cardiss Collins. Testimony published in “Revision of IRS Tax Deductions for the Arts”, the proceedings of the Hearing published by the Government Printing Office. (The results of the Hearing and the

subsequent data collected by the House Government Activities Subcommittee were influential in leading to the current legislative revision and IRS rulings issued in 1984).

**Testimony as Expert Witness and Legal Consultation:**

2012-2014: Ronald Appleby v. Her Majesty the Queen. Retention by the Justice Department of Canada and Canadian Revenue. Case concerning the donation of a monumental sculpture by Gerome to the Art Gallery of Hamilton Ontario. Issues concerning re-fabrication of significant parts, use of undocumented ivory in the restoration and issues concerning the sculpture’s Cuban provenance and its nationalization and subsequent sale by the Castro government.

2011-2013: Marguerite Hoffman v. L&M Arts, David Martinez and Studio Capital, Inc. The case involving a commercial transaction and valuation issues concerning a major Mark Rothko painting.

2011-2014: Cin-Con Heating v. Shapiro and Weigner: The case involving claimed damage to a fixture and interior attributed to Frank Lloyd Wright.

2011-2013: The Dorothy G. Bender Foundation, Inc. and John McEnroe v. Joseph P. Carroll and Joseph P. Carroll Limited: The case involving the valuation of an Arshile Gorky painting and two other works of art connected with the settlement of the Lawrence Salander assets.

2011-2012: American International Ins. Co., as subrogee of Theodore Forstmann, v. Acquavella Galleries, Inc. The case involving the damaged Picasso Portrait of Dora Maar.

2010-2012: Glacier Gallery and I.S.O. Art Ltd. v. Fedex Ground Package System, Inc, Art Capital Group and ACG Galleries. The case involving a painting by Thomas Hart Benton damaged in shipping.

2010-2011: AXA Art Insurance Corp. as subrogee of Gagosian Gallery International, LLC v. Art Courier, et. al. The case involving a highly important painting by Brice Marden, owned by Sotheby’s which had been damaged when in custody of the Courier while it was being transported by the Gagosian Gallery.

2010-2011: AXA Art Insurance Corporation as subrogee of Steven A. Cohen v. Arenson Office Furnishings Inc. The case involving a damaged important sculpture by Jeff Koons owned by collector Steven Cohen.

2009-2012 (ongoing): Atlantic Specialty Insurance Co. v. AE Outfitters. The case involving fire damage to an important sculpture by Jeff Koons owned by collector, Peter Brant.

**Testimony as Expert Witness and Legal Consultation (cont'd):**

2010- 2011: Friedman Benda Gallery v. Museum of Modern Art et al. The case involving the claimed damage to pieces of furniture by 20<sup>th</sup> century artist, Ron Arad.

2009-2011: Richard Green (Fine Paintings) v. Doyle McClendon and Mary Alice McClendon. The case involving the current valuation of one of the most expensive Bonnard painting ever to have been sold.

2009: Cincinatti Art Gallery and Travelers v. Covenant: The case involving a damaged painting by William Glackens.

2009: Expert Witness in Venetia Kapernekas v. Udo Fritz-Hermann Brandhorst. The case involving the valuation of large scale sculpture by Damian Hirst.

2009: Expert Witness in 775 Park Avenue Corp, a/k/a Anton deBekessy v. Marguerite deBekessy. The case involving the role of provenance in the auction sales of fine and decorative art.

2008: Expert Witness testimony in Christie's, Inc v. SWCA, Inc et al. The case concerning authentication procedures for a Picasso bronze.

2006-2009: Expert witness in P&E entertainment v. Chubb Insurance. The case involving a loss claim for audio-visual and photographic sports entertainment material.

2007: Expert witness in Trimount Foundation v. Dexter House Development, Boston. The case involved the valuation and assessment of damages to a major Tiffany mosaic room decoration located in the Ayer Mansion, Boston. The case was settled out of court, although a deposition was taken and a video-taped testimony to be played in court in the event of a trial was made.

2007: Designated expert witness in Stephen and Elaine Wynn v Those Certain Underwriters at Lloyds, London et al. Retained to determine the diminution in value to the painting *Le Reve* by Pablo Picasso due to a puncture of the canvas; and to determine the market value of the painting prior to the accident. [n.b. *Le Reve* was to be sold, prior to the damage, for \$139 million which would have made it at the time the most expensive work of art ever to be sold.]

2006: Expert witness in Those Certain Underwriters at Lloyds, London et al v Nancy Cooperman. Civil case in which Nancy Cooperman was sued for \$22 million by the above insurance companies. The case was decided in her favor based, in part, on the valuation submitted by Wiener Wolf Associates, LLC and my testimony. In addition, the Court accepted our stated valuation concept that a substantial appraisal discount was mandated by the events of September 11, 2001. (This may be the only case in which this concept was presented to a jurisdictional authority).

2005: Expert witness in United States v. Rocco de Simone: Criminal case involving representation of French impressionist and modern paintings, consignment agreements and related art world practices. De Simone, who risked going to prison for approximately seven years, was exonerated based, in large part, on expert witness testimony.

2005: Expert witness in Levin v. Harned: Case involving art world practices and representation of 19<sup>th</sup> century Italian sculpture sold by Gallery 63, New York

2005: Expert witness in Levin v. Harned: Case involving art world practices and representation of French furniture and decorative arts sold by Ed Hardy, Inc. San Francisco.

2005: Expert witness in Levin v. Harned: Case involving art world practices and representation of French furniture and decorative arts sold by Foster Gwin, Inc. San Francisco.

**Testimony as Expert Witness and Legal Consultation (cont'd):**

2005: Expert witness in Levin v. Harned: Case involving art world practices and representation of French furniture and decorative arts sold by John J. Nelson Antiques, Inc., Los Angeles.

2004: Expert witness in Levin v. Harned: Case involving art world practices and representation of French furniture sold by Dalva Brothers, Inc., New York. Testified for Dalva Brothers who won on all counts.

2004: Expert witness in Cathers v. Barnes. Case involving allegation of non-payment of bill. Testified for defendant on art market practices and representation of objects by dealers. Victor Wiener—

2003: Legal consultation in “Phoenix Art Gallery v. Kimbell Museum.” Case involving non-fulfillment of purchase and the interrelationship of provenance concerns.

2003: Expert witness in “Charles Malette v. Her Majesty The Queen,” Vancouver, Canada. Retained by the Department of Justice, Canada as an expert witness in appraisal methodology and blockage discount in a dispute concerning the donation of 981 works on paper by the Canadian artist, Harold Feist. The government’s position was upheld by the Court of Appeals with reliance upon my expert report as part of the justification for the decision.

2002—present: Consultant and expert witness for the City of New York in the settlement of an insurance claim for artist Wen-Ying Tsai. Valuation considerations include issue of blockage discount.

2001—2002: Expert witness testimony in “Thomas Colville Fine Arts, LLC v. Kent Gilyard et al.” Testimony concerning art sales practices, issues of authenticity and auction house sales practices and guarantees.

2002: Legal consultation in “Gay Culverhouse v. Centrifugal/ Mechanical Associates, Inc. et al.” Case involving insurance damage and loss claim.

2002: Expert witness testimony in “Estate of Louise Nevelson et al v. Carro, Spanbock et al.” Testimony concerning the valuation of over 3,000 works of art by Louise Nevelson and issues of blockage discount.

2002: Legal consultation in “Nares et al v. M&W Waterproofing, Inc.” Case involving insurance damage and loss claim for art work created by artist, James Nares.

1999—2001: Expert witness for testimony to the Philadelphia Arts Commission re: *Dream Garden* Mosaic in the Curtis Office Building. It was anticipated that litigation in this case would be heard in the U.S. Supreme Court since constitutional issues are involved.

1993: Expert Witness in “The Matter of the Definition of Legal Fees Payable to the Estate of Andy Warhol.” Expert Witness on appraisal methodology and blockage discount. At issue was the valuation of an estate claimed to be in excess of \$900. million. This was probably the most important art valuation case ever to be tried in the U.S.

1992: Expert Witness in “Goldman v. Barnett”

1985: Expert Witness for the Treasury Department in the United States of America v. Jarelco, Inc. As a result of this action, the Treasury Department was able to reclaim more than \$50 million in lost revenue.

**Lectures and Conference Participation:**

March, 2013: Panelist, Art Governance and Financial Planning Conference, Stephenson Harwood, London.

May, 2012: Speaker and panelist at the Art Investment Conference of the London Business School of London University. The panel concerning contemporary art as an asset class in a volatile marketplace.

April, 2012: “Art Appraisal and Litigation”. Seminar organized by the Art History Faculty of Stanford, University, Palo Alto, CA.

April, 2012: “Valuing Art in the Time of Chaos”. Speaker and panelist at the seminar hosted and organized by the New York Law School.

March, 2012 “What is art worth NOW?": Panel discussion presented by the New York Armory Show.

March, 2012: “Best Practices in Art Valuation”, lecture presented for financial advisors as part of a seminar series hosted by Fine Art Wealth Management, London, England.

November, 2011: “Art Valuation Concerns for High Net Worth Clients”, lecture presented for financial advisors and clients as part of a seminar series hosted by BNY Mellon, London, England.

August 2011: “Legal Liability Exposure When Conforming to USPAP” lecture presented for the American Society of Appraisers in Washington, DC at their annual national conference.

March, 2011: “The Importance of a Properly Prepared Art Valuation”, lecture presented for financial advisors as part of a seminar series hosted by Fine Art Wealth Management, London, England.

June, 2010: “Valuation Parameters for Fine Art in a Volatile Marketplace” for the Monterey Historical Society, Monterey, California.

May, 2010: Speaker and panelist at the Art Investment Conference of the London Business School of London University. The seminar concerning art as an asset class in a volatile marketplace.

April, 2010: Series of lectures for the University of Southern California, Los Angeles, on the “Valuation of Mondrian’s Furniture and its Relation to his Body of Work”.

November, 2009: “Appraising Works of Art in a Selective Marketplace”, for Chubb Insurance underwriters and brokers as part of Chubb’s continuing education program.

May, 2009: Speaker and panelist at the Art Investment Conference of the London Business School of London University. The seminar concerning art as an asset class in general and the current market for contemporary art in particular.

February, 2009, Moderator of Panel on works of art seized during the Holocaust, panel organized by Withers Bergman, LLC.

November, 2008: “The Appraisal of Photography, Photographic Archives and Audio Visual Material” and “Serving as an Expert Witness” for the Picture Archive Council of America.

July, 2008: “The Dynamics of Fair Market Value” for *Jewelry Camp*, an international conference for appraisers of gems and jewelry and for gemologists held at Hofstra University, Garden City, New York.

**Lectures and Conference Participation (cont'd):**

May, 2008: “The Current Market for Contemporary Art and Other Property of High Value”, for Chubb Insurance underwriters and brokers as part of Chubb’s continuing education program.

December, 2006: “Appraising and the Cotemporary Art Market”, for Sotheby’s Masters Degree program in the Business of Art, given in Miami Beach, Florida in conjunction with Art Basel Miami.

April, 2006: “The Legal Responsibilities of Appraisers for their Clients” for national conference of the International Society of Appraisers,” Santa Fe, NM.

October, 2005: “Appraising for Insurance Purposes”, for Chubb Insurance underwriters and brokers as part of Chubb’s continuing education program.

April, 2005: “Recent Legal Developments and Expert Witness Testimony” for national conference of the International Society of Appraisers,” Chicago, IL.

December, 2004: “Appraising for Insurance Purposes”, for Chubb Insurance underwriters.

March, 2004: “Authenticity Considerations for Appraisers of Fine Art,” for national conference of the International Society of Appraisers,” Atlanta, GA.

March, 2004: “The Balancing Act: Professional Responsibilities and Legal Expectations,” for national conference of the International Society of Appraisers,” Atlanta, Georgia

March, 2004: “Appraising and Underwriting Government Collections,” for the Association of Government Risk Insurance Pools, Santa Barbara, CA.

October, 2003: “Appraising for Insurance Purposes” Special seminar of the Inland Marine Underwriters Association, given in Chicago and New York.

April, 2003: “The Dream Garden Mosaic, The Masterpiece of Louis Comfort Tiffany,” for national conference of International Society of Appraisers, Philadelphia, PA.

April, 2003: “From Bauhaus to Art Deco: German Ceramics of the 1920s and 1930s,” The Cleveland Museum of Art, Cleveland, OH.

November, 2002: “Blockage Discount,” lecture and Art Law section of New York City Bar Association.

January, 2002: “Do it Now: Workshop on Emergency Preparedness,” National Association of Corporate Art Managers, Sotheby’s New York, NY.

November, 2001: “From Bauhaus to Art Deco: German Ceramics of the 1920s and 1930s,” Sotheby’s Institute of Art, New York, NY.

June, 2001: “Fine Arts Appraisals and Valuations,” Inland Marine Underwriters Association National Conference, Keystone, CO.

April, 2001: “Appraisal Standards for the Insurance Profession,” Mariners Club, New York City.

October, 2001: “Fine Arts Appraisals and Valuations,” Inland Marine Underwriters Association,

**Lectures and Conference Participation (cont'd)**

May, 2000: Chair and speaker of session on “Museum Loan Shows: The Valuation Process,” American Association of Museums Conference, Baltimore, MD.

June, 1997 and June, 1999: Program Coordinator and Moderator for all day seminar on “How to Establish and Conduct an Appraisal Practice” offered by New York University Appraisal Studies Program and the Appraisers Association of America.

November, 1998: Lecture on “Art Theft Forgery and Illicit Traffic: The Appraiser’s Perspectives” paper delivered at a symposium on Art Theft organized by Rutgers University, New Brunswick, NJ. This paper will soon be published by Rutgers.

November, 1997: Lecture on “Art Fraud and Forgeries” for International Art Theft Symposium organized by the FBI.

June, 1997: Lecture on “Object ID and the Appraiser” at a symposium on “Protecting Cultural Objects in the Global Information Society;” an international symposium in Amsterdam organized by the Getty Information Institute.

June, 1995: Program Coordinator and Moderator for all day seminar on “How to Choose an Appraiser” offered by New York University Appraisal Studies Program and the Appraisers Association of America.

June, 1993: June, 1994, June 1996 and June 1998. Program Coordinator and Moderator for all day seminar on “Professional and Legal Liability Concerns for Personal Property Appraisers” offered by New York University Appraisal Studies Program and the Appraisers Association of America.

October, 1990: Lecture to patrons of the Metropolitan Museum of Art on “The Art of Appraising for Insurance, Estate and Donation.”

March, 1990: Moderator of panel discussion on appraising and insurance for Conference of National Association of Corporate Art Managers.

April, 1989: Moderator and participant in panel discussion on appraising and the art market as part of the 1989 ARTnews World Art Market Conference.

May, 1985: Discussant at all-day seminar on “The Economics of Art” organized jointly by the New York University Graduate School of Business and The Art Economist.

March, 1984: One of four panel participants on “The Tax Exempt Gift”, a seminar organized by the International Foundation for Art Research.

1983-1984: Participant and organizer of public service seminars on appraising and the art market held in New York, Los Angeles, San Francisco and Chicago, sponsored jointly by the Appraisers Association of America and “Dewar's White Label.”

November, 1983: Lecture on principles of appraising before the American Society of Picture Professionals, New York (Photo researchers and editors).

October, 1983: Crocker Museum of Art, Sacramento, California. Lecture on appraising and the art market.

1983-2001: Organizer and participant in sixteen National Conferences of the Appraisers Association of America.

**Exhibitions:**

“Now Playing; Italian Film Posters from the Lawrence Auriana Collection”, New York University, Casa Italiana Zerilli Marimo, 2005.

Series of Exhibitions of Paintings, Drawings and Prints for La Cassa di Risparmio, Rome, 1978-1980.

Series of Exhibitions of Paintings, Drawings and Prints for Christie's Rome, 1974-1978.

“Eighteenth Century Italian Prints” for the Metropolitan Museum of Art, 1971.

**Publications:**

*Overview of the Current State of the Art Market 2012*, prepared by IMUA (Inland Marine Underwriters Association) Arts and Records Committee, co-author.

*Why Auction Estimates are not Insurance Appraisals*, (co-authored with Charles Wong), 2011, for Chubb Collectors (website and printed copy)

*Valuing Art Investment Funds: An Appraisers Viewpoint*, 2011, published by Fine Arts Wealth Management.

*The Role of Appraisers in the Process of Authentication and in Other Related Valuation Issues*, (co-authored with Charles Wong), 2011, included in *Appraisal Studies Journal* of the International Society of Appraisers.

*Overview of the Current State of the Art Market 2010*, prepared by IMUA (Inland Marine Underwriters Association) Arts and Records Committee, co-author.

*The Unique Aspects of Appraising Large Scale Works of Art, 2009*, included in *Appraisal Studies Journal* of the International Society of Appraisers

*Appraising Art in the Stratosphere: The Dynamics of Steve Wynn's Elbow and Other Valuation Situations*: 2008, included in *Appraisal Studies Journal* of the International Society of Appraisers.

*Visual Artists Rights Act [VARA]*, 2005, prepared by IMUA (Inland Marine Underwriters Association) Arts and Records Committee, co-author.

*Collections Management Systems for Collectors and Institutions*, 2004, prepared by IMUA (Inland Marine Underwriters Association) Arts and Records Committee, co-author.

*All About Appraising: The Definitive Appraisal Handbook*, 2003, published by Appraisal Institute of America, co-editor and principal contributor.

“The Pleasures and Perils of Buying in the Glamour Marketplace: Gianni Versace, Jacqueline Onassis, Pamela Harriman, Andy Warhol and Others,” *The Appraiser*, First Issue, 2002.

“Art Theft Forgery and Illicit Traffic: The Appraiser's Perspectives” Rutgers University Press, New Brunswick, NJ – forthcoming.

“Appraisal Standards for the Insurance Profession,” co-author, published by the Inland Marine Underwriters Association, June, 2001 and distributed to insurance professionals.

**Publications (Cont'd):**

“German Ceramics of the 1920s—1930s,” *The Appraiser*, First Issue, 2000.

“All About Appraising, Elements of a Correctly Prepared Appraisal: Clear Title,” *Antiques and the Arts Weekly—The Newtown Bee*, January 31, 1997.

“All About Appraising, Elements of a Correctly Prepared Appraisal: Market Analysis,” *Antiques and the Arts Weekly—The Newtown Bee*, October 18, 1996.

“All About Appraising, Elements of a Correctly Prepared Appraisal: Determining Authenticity,” *Antiques and the Arts Weekly—The Newtown Bee*, September 20, 1996.

“All About Appraising, Elements of a Correctly Prepared Appraisal: A Practical Example of Blockage Discount,” *Antiques and the Arts Weekly—The Newtown Bee*, May 24, 1996.

“All About Appraising, Elements of a Correctly Prepared Appraisal: The Chagall Sale,” *Antiques and the Arts Weekly—The Newtown Bee*, May 24, 1996.

“All About Appraising, Elements of a Correctly Prepared Appraisal: Liquidation Value,” *Antiques and the Arts Weekly—The Newtown Bee*, March 15, 1996.

“All About Appraising, Elements of a Correctly Prepared Appraisal: Marketable Cash Value,” *Antiques and the Arts Weekly—The Newtown Bee*, December 22, 1995.

“All About Appraising, Elements of a Correctly Prepared Appraisal: Marketable Cash Value” *Antiques and the Arts Weekly—The Newtown Bee*, November 17, 1995.

“All About Appraising, Elements of a Correctly Prepared Appraisal, Part VII: Fair Market Value” *Antiques and the Arts Weekly—The Newtown Bee*, November 17, 1995.

“All About Appraising, Elements of a Correctly Prepared Appraisal, Part VI: Definition of Value”, *Antiques and the Arts Weekly—The Newtown Bee*, September 8, 1995.

“All About Appraising, Elements of a Correctly Prepared Appraisal, Part V: Choosing the Most Appropriate Market for Valuation”, *Antiques and the Arts Weekly—The Newtown Bee*, July 21, 1995.

“All About Appraising, Elements of a Correctly Prepared Appraisal, Part IV: The Comparative Market Data Approach to Valuation”, *Antiques and the Arts Weekly—The Newtown Bee*, June 16, 1995.

“All About Appraising, Elements of a Correctly Prepared Appraisal, Part III: The Income Approach to Valuation”, *Antiques and the Arts Weekly—The Newtown Bee*, April 28, 1995.

“All About Appraising, Elements of a Correctly Prepared Appraisal, Part II: The Cost Approach to Valuation”, *Antiques and the Arts Weekly—The Newtown Bee*, April 7, 1995.

“All About Appraising, Elements of a Correctly Prepared Appraisal, Part I”, *Antiques and the Arts Weekly—The Newtown Bee*, February 10, 1995.

“All About Appraising, How to Find an Appraiser”, *Antiques and the Arts Weekly—The Newtown Bee*, January 13, 1995.



**Publications (Cont'd):**

“All About Appraising, What is an Appraisal”, *Antiques and the Arts Weekly—The Newtown Bee*, December 9, 1994.

“Volatile Art World Increases Pressure On Appraiser's Job”, *New York Law Journal*, March 21, 1994.

“Be Accurate, Not Sorry Standards Set for Fraud Liability of Dealers, Appraisers”, *New York Law Journal*, November 8, 1993.

“Napoleon Takes Memphis”, *The Appraiser*, Summer, 1993.

“The 'Flea Market' Phenomenon—An Overview”, *The Appraiser*, November-December, 1992.

“Sotheby's Sells the Friedman Collection”, *The Appraiser*, November-December, 1992.

“Using An Appraiser: What Lawyers Need To Know” *New York Law Journal*, March, 1991, (subsequently reprinted in the national Law Journal.)

“Artful Marketing: Sporting Art,” *Spur Magazine*, September/October, 1988.

“Investing in Equine Art,” *Horse Digest*, January, 1986.

Bimonthly articles on the New York art scenes for *Fine Arts*, an Italian magazine, 1981-1983.

Series of auction catalogues for Christie's Rome, 1974-1978.

Editor, *The Appraiser*, a monthly publication of the Appraisers Association of America on developments within the profession, 1982-2004.

“Eighteenth century Italian Prints,” *Metropolitan Museum of Art Bulletin*, January, 1971.

**Education:**

Completion of all course requirements for Ph.D., New York University, Institute of Fine Arts.

M.A. New York University, Institute of Fine Arts.

Certificate in Museum Training, New York University, Institute of Fine Arts, offered in conjunction with the Metropolitan Museum of Art, New York (including a 6 month internship at the Victoria and Albert Museum, London).

B.A. City College of New York.

**Fellowships:**

Chester Dale Fellowship, Metropolitan Museum of Art, for preparation of the Print Department exhibition, "Eighteenth Century Italian Prints," 1971. A one year grant.

Ford Foundation Fellowship in Museum Training. A two year grant which provided for course work at the Institute of Fine Arts and internships in the Print Department of the Metropolitan Museum of Art and in the Print Department of the Victoria and Albert Museum, London, as well as extensive European travel for two summers.

Fellowship, Institute of Fine Arts, New York University for Ph.D studies. A one year grant.

Graduate Faculty Fellowship, New York University. A one semester grant.

New York State Regents Scholarship. A four year grant

**Professional Recognition:**

2005: Member Vetting Committee for the San Francisco Antiques Fair.

2003: Certified Instructor of *Uniform Standards of Professional Appraisal Practice*, designation given by the Appraisal Foundation, Washington, D.C. (recertified 2005, 2010, 2012).

1988: Certified Association Executive. Designation awarded by the American Society of Association Executives after an all day examination and evaluation of professional achievements.

1979: Accepted for membership, Appraisers Association of America. While Executive Director, served on the by-laws committee, responsible for current revisions; and wrote the methodological section and Old Masters Paintings section of the certification examination as well as taught the course on "How to Prepare for the Certification Examination."

1978: Designated Art Expert for the Italian Courts in Rome and elsewhere in Italy. ("Perito del Tribunale in Arte" by the Tribunale di Roma).

Quoted frequently in *The New York Times*, *International Herald Tribune*, *The Wall Street Journal*, *Art & Auction*, *The Economist*, *The Financial Times* et al. Press clippings available upon request.

Interviewed on CNN, The Today Show, ABC News with Peter Jennings, NPR, ABC News, New York et al.

**Attachment B**

**Zhang Report**

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**REVIEW OF EXPERT WITNESS REPORT OF MICHAEL PLUMMER,  
ARVEST PARTNERS, dated July 8, 2014**

SUBMITTED TO VICTOR WIENER, VICTOR WIENER ASSOCIATES, LLC on  
July 25, 2014

PREPARED BY ZHANG YI

1. This report outlines the ways in which the Expert Witness Report of Michael Plummer of Artvest Partners, dated July 8, 2014 (*ARTVEST REPORT*) misinterprets Clare McAndrew's TEFAF Art Market Report 2014, to which I contributed as a co-author.

2. The Artvest Report identifies four major sectors of the fine art market: European Modern Art, Impressionist and Post-Impressionist Art, European Old Master Paintings, and Post-War and Contemporary Art. The Artvest Report compares the successes of these categories:

Of these four sectors, three have declined in value since 2011"; "While record prices have been set and growth has been significant in the Post War and Contemporary ("PWC") sector, other sectors of the art market have been stagnant, and, as mentioned above, some have posted declines in turnover in the last two years." (Michael Plummer's Artvest report, pp. 7-8)

3. The art market is a supply-driven market. The reason for which Impressionist & Modern paintings failed to meet expectations is the lack of high-quality works on the market.

4. The charts on pp. 7-8 of the Artvest Report show that a sector's turnover depends on the volume of work in the sector. More works in a sale will likely bring more turnover. The lack of works to sell explains the decline of Old Master works, Impressionist & Post-Impressionist works, and works of Modern Art.

5. In the TEFAF Art Market Report 2014, McAndrew explains differences in the performance of Impressionist and Post-Impressionist sector relative to other sectors:

The Impressionist and Post-Impressionist sector is now much smaller relative to Post War and Contemporary and Modern art, and its share of the fine art market was less than half that of Modern art in 2013 at 13%. Works by 15,300 artists were sold at auction in this sector, less than half that of the Post War and Contemporary sector and 10% less than the Modern sector. This can be explained to an extent by the increasing scarcity of Impressionist and Post Impressionist works: **for example, in 2013 just eight paintings by Paul Cezanne were sold at auction and only 25 by Claude Monet whereas hundreds of paintings by**

**artists such as Andy Warhol or Pablo Picasso were sold during the year.**

(Clare McAndrew, *TEFAF Art Market Report 2014*, p. 51)

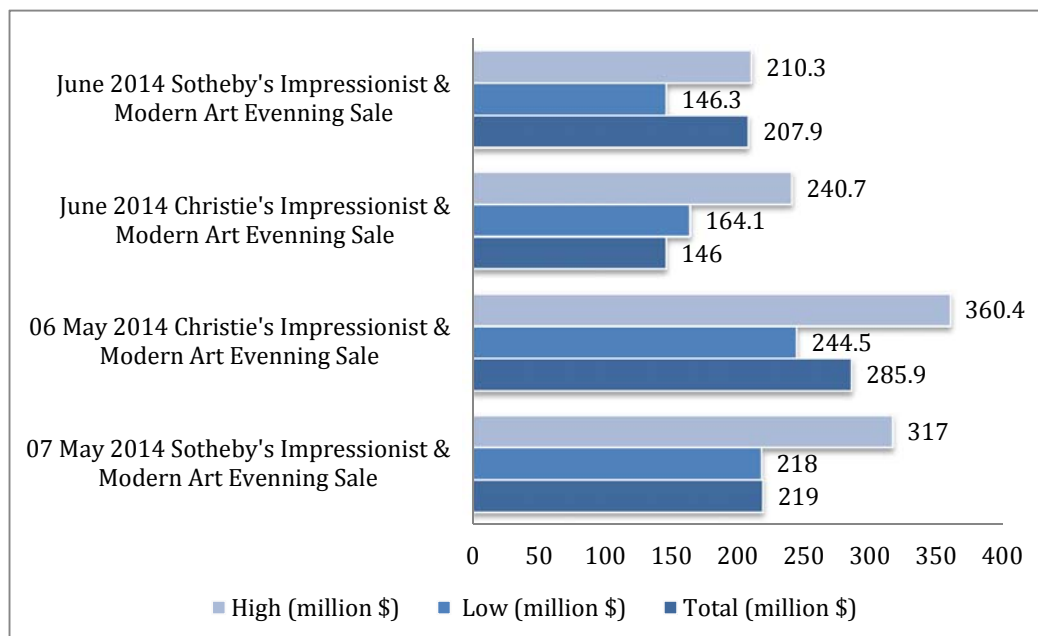
6. In the TEFAF Art Market Report 2014, McAndrew explains differences in the performance of the Old Master sector relative to other sectors:

Old Masters is the smallest sector of fine art, with just 10% of the total value of sales. In 2013, like the Impressionist sector, it suffered from a scarcity of major works with the highest quality works appearing on the market less frequently. (Clare McAndrew, *TEFAF Art Market Report 2014*, p. 53)

7. The Artvest Report is incorrect about Christie's auction data for the Evening Sales of Impressionist & Modern art. The turnover of that section on May 6th was \$285.9 million, and the estimate was between \$244.5 million to \$360.4 million.

8. Among four evening sales of Impressionist & Modern in 2014 (Chart 1), three of them were above their low estimate. Only one sold below its estimate, owing to the low quality of works offered. Art journalist Carol Vogel noted: "Top-flight Impressionist and Modern works are far harder to come by than choice contemporary works. And as was true at the sales last month in New York, both Christie's and its arch rival, Sotheby's, had to struggle to find material." Furthering the point, Vogel quoted prominent New York art dealer Dominique Lévy on the quality of the works in the sale: "It was day-sale material," referring to the less-expensive daytime auctions." (Carol Vogel, "At Christie's London Auction, Little Action", *New York Times*, June 24th)

CHART 1 Four Evening Sales of Impressionist & Modern in 2014



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Source: VWA based on Christie's & Sotheby's Auction Data

9. On June 24th, 2014, Sotheby's Sale of Old Master & 19th Century Paintings & Drawings made \$11.1 million, the highest total for a sale in this category in France in the last 20 years. In their press release for this sale, Sotheby's said that the sale contained "a refined choice of rare artists and powerful, high-quality images," demonstrating that great works in this sector command strong prices. The performance of this sector depends not only on the quality of works, but also on verifiable authenticity and provenance, among other factors.

10. On July 9th, 2014, Sotheby held an Old Master & British Paintings Evening Sale In London. The sale made \$117.13 million, above its high estimate of \$116.79, the highest total the company has earned for the category in London, while a day before Christie's faced what art dealer Richard Feigen called "bloodbath" in the same category. The reasons for this contrast are evident in Scott Reyburn's explanations in a *New York Times* article.

A. Brand-name artists are an issue:

"There is an issue of branding here," said Andreas Pampoulides, head of fine arts and business development at the Mayfair branch of the Spanish dealers Coll & Cortés. "There aren't so many brand artists in Old Masters, but when they do appear, they can sell for stratospheric prices." (Scott Reyburn, "For Old Masters, It's All About the Name," *New York Times*, July 11th, 2014)

B. Issues of quality and provenance are important:

Sotheby's had the edge on this occasion thanks to quality paintings from four prestigious private collections, including the English aristocratic families of the Earl of Warwick and the Duke of Northumberland. (Scott Reyburn, "For Old Masters, It's All About the Name," *New York Times*, July 11th, 2014)

C. The subject and quality relative to expectations for a certain artist are relevant:

[...] Christie's included a painting [*Saint Praxedis*] catalogued as the work of Johannes Vermeer, 17th-century Holland's most coveted painter, despite debate over its authorship. [...] At the sale, the painting attracted little competition and was bought for \$10.6 million; including fees by an unidentified Asian bidder in the room, and the painting's low estimate is \$10.26 million "Collectors remained skeptical," the London dealer Charles Beddington said. "It wasn't a subject you want from Vermeer." (Scott Reyburn, "For Old Masters, It's All About the Name," *New York Times*, July 11th, 2014)

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11. The Artvest Report states: “Both the Impressionist & Modern Paintings and PWC sale had significant and desirable works of art with many that had not been on the market for decades, yet the Impressionist & Modern paintings sale still performed below expectations and estimates” (Artvest Report p. 8, #24 a.)

12. There is no evidence showing that significant and desirable works from the Impressionist & Modern sector performed below expectations or estimates. On the contrary, when a significant and desirable work appears, it is much more likely to perform above expectations, and at least above its low estimate.

13. In June 2014, at Sotheby’s Impressionist & Modern Evening Sale in London, Monet’s painting *Nymphs* made \$54 million, well above its high estimate of \$50.4 million. This painting failed to sell in 2010 because of a very high estimate of \$44.3 million to \$59.1 million. According to our experience, if a work has been bought in, it is unlikely to appear on auction for the next five years. This painting appeared on auction again after four years and achieved a price above its high estimate, even exceeding the low estimate four years earlier and showing clearly that if a work is highly desirable and significant, collectors will pay for it. This also shows that high-quality work is scarce in this sector.

14. The Artvest Report identifies the emergence of new art markets as an exceptional occurrence:

The significant growth in the size of the art market from 2002 – 2011 is a once in a lifetime event (due to the sudden addition to the global art economy of Russia, China, India and other countries that previously had not been active art collectors). This burst of growth is not likely to be repeated over the next five years. In fact, with growth now concentrated almost exclusively in the PWC sector, I estimate that excluding a price disruption in this sector (see below), growth of the art market will remain choppy over the near to mid-term in all other sectors other than PWC.” (Michael Plummer’s Artvest Report p. 10, # 25, b)

15. We cannot conclude that the growth of the art market from 2002 to 2011 is a once in a lifetime event. Another art market boom driven by the Japanese economic boom took place less than 30 years ago, from 1985 to 1990, during which period the size of art market tripled.

16. The size of art market depends highly on wealthy people. From 2001 to 2013, there was a continuous growth of the number of high-net-worth individuals (HNWI) and world wealth. There is considerable reason to expect global wealth to grow at an accelerated pace in the coming years.

17. McAndrew discusses emerging markets in the TEFAF Art Market Report 2014:

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Each year, emerging markets are increasing their importance in the global wealth hierarchy and have been growing at faster rates than more developed markets, a trend that is expected to continue. Between 2000 and 2013, emerging markets nearly doubled their share of global wealth from 12% to 21%.” (Clare McAndrew, TEFAF Art Market Report 2014, p. 81)

18. In an economy that is facing easy monetary policy, people intend to allocate a great share of their wealth into tangible assets, such as real estate, art etc., to caution against uncertainty or further inflation. Indeed, the size of the art market has benefited heavily from the economic boom of Russia, India, and especially China. However, considering that the Chinese art market is largely a domestic market with very little Western artwork traded in Mainland China, its art taste should be further separated from that of the Western world. Before 2013, Chinese collectors were not very interested in Western artworks. Also, Asian artworks comprise only 3% of DIA’s collection. Taking that into account, we should remove the turnover of the Chinese art market from the global art market (CHART 2). Doing this, we can see that the size of the global art market was far from its second highest peak in 2008, even further from 2007, its highest peak. From this, we can see great potential strength in the future. Since 2013, Chinese collectors have shown great interest in Western artworks. Experts estimate that there are currently only about thirty major collectors of Western art in Mainland China. Serious Chinese collectors of Western art spend considerable amounts of money. For example, Chinese collector Zhang Lan spent \$29.145 million on Andy Warhol’s Little Electric Chair and Martin Kippenberger’s Untitled on May 12th, 2014 at Christie’s auction “If I Live I’ll See You Tuesday: Contemporary Art Auction.”

19. McAndrew also notes the recent increase in Chinese collecting interest in Western art:

Sotheby’s reported that since 2010, the number of Chinese clients bidding for non-Chinese works of art has increased 54%, with about 530 collectors from Mainland China spending \$378 million on Western works during the year. At Christie’s, registrations to bid at auction in London and Hong Kong from Mainland Chinese buyers have doubled.<sup>72</sup> In November 2013, Wanda Group, one of China’s biggest property developers, attracted much public attention when it bought a Picasso work, *Claude et Paloma*, for \$28 million at Christie’s in New York. Various media sources also reported that a Chinese collector bid for the record-breaking Francis Bacon triptych up to \$120 million.” (Clare McAndrew, TEFAF Art Market Report 2014, p. 201)

Chinese collectors have entered the Western market slowly and with caution to date. However of the galleries interviewed, 80% felt that Chinese collectors were becoming more interested in foreign art.” (Clare McAndrew, TEFAF Art Market



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Report 2014, p. 201)

20. The recent increase in Chinese collecting interest in Western art has also been reported in the mainstream press. Chris Michaud has written about it for Reuters:

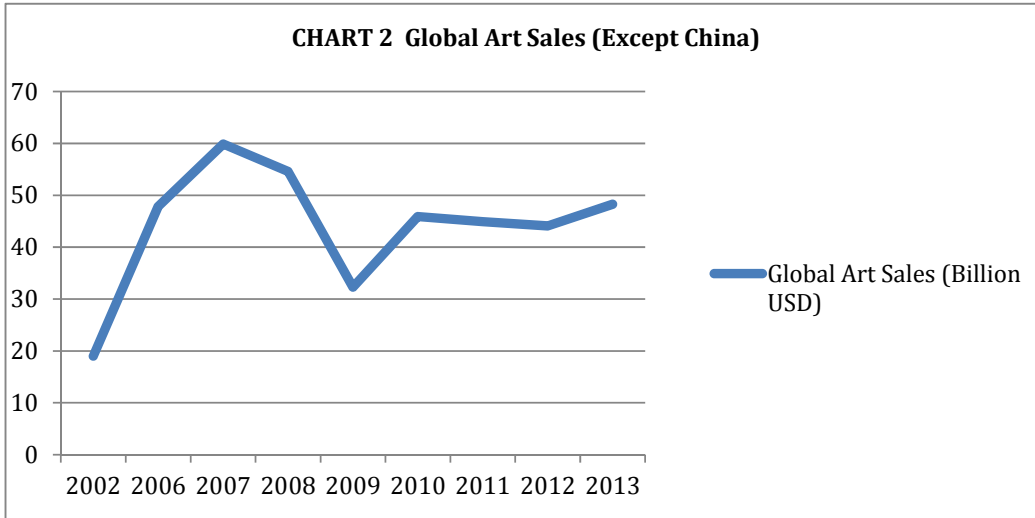
Asian buyers nabbed at least two of the sale's top 10 lots, including "Nymphéas," in a category that was once the near-exclusive purview of U.S. and European collectors. (Chris Michaud, "Christie's NY has its best Impressionist, modern sale since 2010 Reuters, May 6th)

Lampley said growing interest from Asians reflected "a growth in the Asian (art) market generally," as well as the auction house's relatively new presence in Mainland China. (Chris Michaud, "Christie's NY has its best Impressionist, modern sale since 2010," Reuters, May 6th)

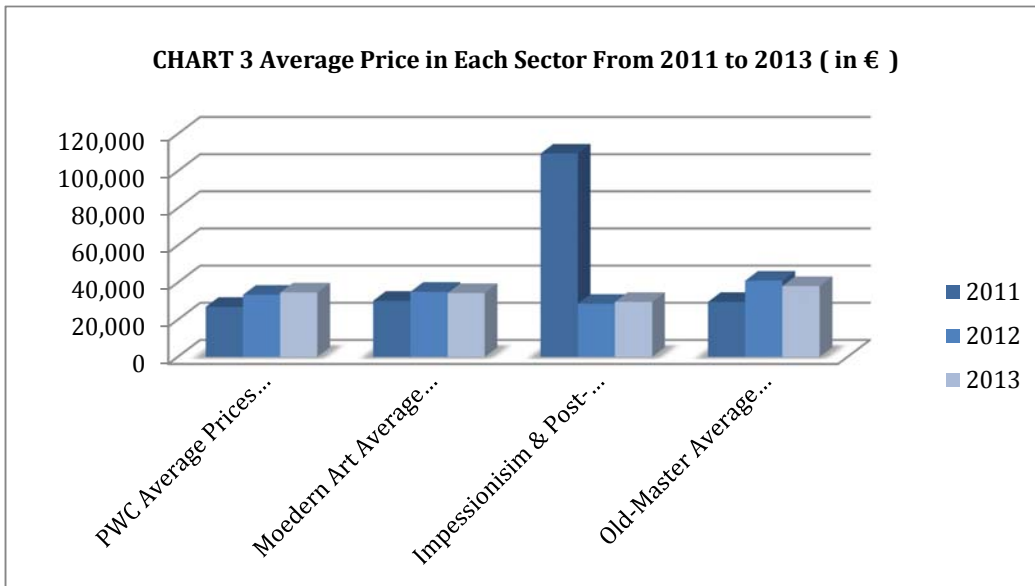
21. There is no evidence to validate the Artvest Report's suggestion that the "growth of the art market will remain choppy over the near to mid-term in all other sectors other than PWC." Nor is there any sign of validity to the Artvest Report's point: "As a consequence of this heightened focus of collectors on the PWC sector, I believe the sector could soon be reaching a "breaking point," (Artvest Report, p. 11, 26.)

22. From CHART 3, we can see that the average price of PWC has not had a dramatic boom from 2011 to 2013. The increase of its average price was mild. Also, the average price of the PWC sector was lower than that of the Modern Art sector and the Old Master sector. Except for Impressionism & Post-Impressionism, all other sectors have had mild increases.

23. Financially, a market can be called "over-heated" or "in a bubble" simply because the growth in high-quality assets of the market can dramatically affect the low-quality assets and, in this case, push up the price. In the PWC scenario, these trends were not evident. Even blue-chip artists breaking their records repeatedly did not affect second- or third-tier artists notably.



Source: VWA with data from Arts Economics



Source: VWA with data from Arts Economics

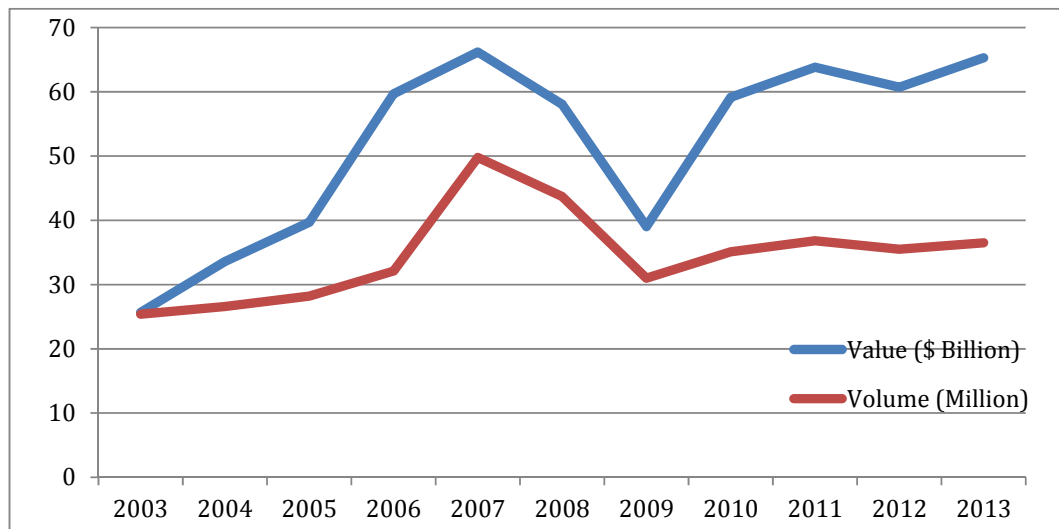
24. The Artvest Report discuss the impact of the financial crisis of 2008-09 on the art market:

When a market sector or the entire market “crashes,” as it did in the Autumn Season in 2008, it creates an illiquid marketplace where values often fall by as much as 50%, and property, especially that of the highest caliber, becomes either difficult to sell, and/or sells for a fraction of its previous value. From the previous market peak in 2007, to its nadir in 2009, the fall in sales was 54.6%.” (Michael Plummer’s Artvest Report p. 10)

25. When facing systematic economic risk, the art market will definitely be affected. However there is no evidence showing that the value will fall sharply. The turnover of the entire art market was falling deeply simply because collectors did not want to sell their collections in a decreasing market, and there were less volumes for trade.

Total Global Art Sales and Volumes 2003 to 2013

CHART 4



Source: VWA with data from Art Economics

26. CHART 12 in the Artvest Report shows that the buy-in rate nearly doubled in Nov. 2008. However, the high buy-in rate owed in large part to the collapse of the Emerging Asian Market and some “superstar” living artists.

27. Artprice Art Market Trends 2008 identifies buy-in rates for that year:

In 2008, the bought-in rate for works estimated above \$100,000 was 37.75% compared with 40.87% for those valued at between \$10,000 and \$100,000. At the Christie’s and Sotheby’s October / November sales of Modern and Contemporary Asian art in Hong-Kong 35% of the works remained unsold. On 30 November, Christie’s Asian art sale, there are 44% of the works had to be bought in. (Artprice Art Market Trends 2008)

28. Artprice Art Market Trends 2009 shows the effects in the following year:

Gupta, a figure-head of the Indian avant-garde, posted an annual total down 95% (from \$15.1m to \$627,000). Takashi Murakami, guru of the new Japanese art scene, saw his auction revenue divided by ten (\$3m in 2009 vs. \$32m in 2008). Damien Hirst’s revenue total was only 1/14th of its 2008 total. The big winner of the last manifestation of the acquisitive fever that consumed the market during its

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speculative ascent - with no less than 65 results above the \$1m line in 2008 - signed only 2 seven-figure results in 2009. The year was also quiet for Jeff Koons, another major star of the Contemporary scene, whose revenue total dropped from \$89m to \$28m and whose prices contracted by 39% (2007-2009). (Artprice Art Market Trends 2009)

29. Artprice Art Market Trends 2009 discusses the Chinese art market that same year:

Likewise, the revenue totals of Chinese contemporary artists who shot to the top of the market in record times, were also substantially impacted by the crisis: Wang Guangyi's total shrank by 75% and Zhou Chunya's by 57%. Liu Ye's total contracted by 65%, Yan Pei-Ming's by 80%, Yue Minjun's by 84%, Zhang Xiaogang's by 86% and Liu Xiaodong's by 88%. (Artprice Art Market Trends 2009)

30. In 2009, we can see that the buy-in rate went back to normal, mostly because the auction houses were very cautious in selecting lots, and collectors did not want to sell their works during a recession.

31. Even in a recession, we can see that there were high-quality works from the Old Master sector, Impressionism & Post-Impressionism, and even the Modern sector and Post-War sector to sell. This trend is detailed in Artprice Art Market Trends 2009:

In the first quarter of 2009 there were 80 results above the \$1m line (half the number posted in the 1st quarter of 2008) of which 30 came from the Pierre Bergé/ Yves Saint Laurent sale, suggesting an exceptionally dynamic market for museum quality works. This happened just as Wall Street was posting its lowest level for 12 years (S&P 500 at 743.33 points). (Artprice Art Market Trends 2009)

The first big event in 2009 was Sotheby's Old Masters sale in New York. The catalogue was still large (289 lots) but demand had become very selective. The result was an unsold rate of 45%. The millionaire collectors were however still in the game and they bid a particularly rare work to above \$10m: the best result of the 29 January sale was \$11.5m for Joseph Mallord William Turner's The Temple of Jupiter Panellenius restored (\$500,000 short of its low estimate). (Artprice Art Market Trends 2009)

32. The 41% buy-in rate in November 2008 was the consequence of the financial crisis, which was possibly a once-in-a-lifetime event. The last financial crisis of such a magnitude was in 1929, and it is unlikely to happen in the next five years.

33. The Artvest Report identifies the role of Sotheby's and Christie's in the market:

At the higher end of the market, Sotheby's and Christie's are the preferred venue

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for selling to achieve maximum sales value, as they have the greatest global reach amongst collectors and control over a third of the international auction market.” (Michael Plummer’s Artvest report, p. 14)

34. While it is true that Sotheby’s and Christie’s dominate the high end of the art market, the art market is a very diverse market, with numerous venues unique advantages. For example, Phillip’s is strong for emerging artists, and Poly Auction and Guardian Auction are strong for traditional Chinese paintings.

35. Artprice Art Market Trends 2010 shows Phillip’s strengths relative to any auction house:

The auctioneer (Phillips) also posted seven new records on the same day - all above the million-dollar line – for Felix Gonzalez-Torres, Cindy Sherman, Daniel Buren, Lee Lozano, Robert Morris, Rudolf Stingel and Thomas Schütte. (Artprice Art Market Trends 2010)

36. Considering the market capacity, it is wise to use multiple auction channels to deal with different sectors of works.

37. The Artvest Report attempts to demonstrate collecting disinterest in certain collecting categories:

A significant segment of DIA’s collection is in areas that have fallen out of favor with collectors and that are underperforming their market peak in 2007, specifically American Art pre-1950 (14.6%), Old Master and 19th Century European Paintings (28.1%), Impressionist & Modern Art (23.8%), for a total of 66.5% of the collection.” (Refer to Section IV.) (Artvest Report, p. 24)

38. There is no evidence showing that the sectors identified by the Artvest Report “have fallen out of favor with collectors.”

39. The Artvest Report quotes a line chart by Mei Moses Art Index in an effort to prove his conclusion. However this data does not prove the conclusion, because it is based on a very limited data sample. The Mei Moses Art Index is based on data from works that have repeat sales records in Christie’s and Sotheby’s, and so, there are only a few thousand samples that qualify for its indices. Every year tens of thousands of works are sold through auctions and private dealers, so this is a very narrow sample for the art market, and it cannot represent greater art market trends. For example, from 1990 to 1991, the art market retracted significantly, but the Mei Moses Art Index still shows a mild increase for that period. Also, the methodology of the Mei Moses Art Index does not accurately reflect the importance of individual artists or the quality of individual artworks, which are critical matters for sales. Also, the line chart does not show negative returns on each sector; we can only see positive returns on all sectors.

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40. The Artvest Report discusses the effects of offering a large volume of work:

Selling a large block of property into a market that exceeds its liquidity or capacity is a high risk strategy. Even the most liquid of the sectors, PWC and Impressionist & Modern, have capacity limitations.” (Artvest Report, p. 30)

41. While capacity limitations may apply, such limitations are based on the amount of wealth held by HNWI and the number of collectors in those areas. Using sales values based on Christie’s and Sotheby’s to calculate that limitation is speculative and narrow.

Submitted By: Zhang Yi

**Attachment C**

**Barth Report**

**REVIEW OF EXPERT WITNESS REPORT OF MICHAEL PLUMMER, ARTVEST PARTNERS LLC, dated July 8, 2014**

SUBMITTED TO VICTOR WIENER, VICTOR WIENER ASSOCIATES, LLC on July 24, 2014

PREPARED BY JANNETTE M. BARTH, PH.D., PEPACTON INSTITUTE LLC

**BACKGROUND:**

Pepacton Institute LLC (the "Company") was retained by Weil, Gotshal & Manges LLP ("Counsel") in connection with Counsel's representation of Financial Guaranty Insurance Company ("the Client") to assist Victor Wiener Associates, LLC (VWA) in the preparation of an appraisal report of works of art in the collection of the Detroit Institute of Arts (DIA). I am an Economist and Managing Director at the Company. I have extensive experience concerning economic issues related to art valuation. In addition to having multiple degrees (B.A., M.A. and Ph.D.) in economics, I have a Certificate in Personal Property Appraising from New York University and a Certificate in Fine and Decorative Art from Sotheby's Institute of Art. I have consulted on many art appraisals and have served as an expert witness on numerous art valuation cases. I have taught both undergraduate and graduate courses in economics at several colleges and universities, and was a senior faculty member, teaching art economics and finance, in the graduate art business program at Sotheby's Institute of Art. I have authored articles on blockage discount and regularly lecture on the topic. In addition to specific work in the art market, I have over 35 years of experience conducting economic analysis in various sectors. A full CV is attached. The Company is being compensated at the rate of \$300 per hour for my time.

In connection with the Company's engagement, I prepared this written review of a valuation conducted by Artvest Partners LLC.

Neither I nor the Company has a financial interest in the DIA works of art; neither is affiliated with an auction house, art dealer, or art investment fund; and neither is an adviser regarding investments of any kind.

In connection with this review, I was provided with copies of the following documents:

- (1) Artvest Partners LLC, Expert Witness Report of Michael Plummer, July 8, 2014, with Exhibits A through G.



- (2) Houlihan Lokey, Catalog of Information Concerning Artwork Housed at Detroit Institute of Arts, with Christie's Appraisal attached as an Appendix.

In addition, the following document was reviewed:

TEFAF 2014 Art Market Report

This review report does not value any of the works in the DIA collection. The appraisal firm, VWA, is solely responsible for final valuation figures. This report provides only a review of Artvest's methodology applied in the valuation of works in the DIA collection, with particular attention paid to the economic assumptions Artvest uses in arriving at its conclusions. This report is intended to assist VWA in its own valuation of the works.

SUMMARY OF FINDINGS:

- While it is recognized that this valuation assignment is challenging due to its size, complexity and short deadline, there are a number of elements in the Artvest report that indicate that the valuation presented by Artvest is inaccurate.
- Artvest discusses a number of economic factors in the report, and the presumed relevance of these economic factors is unsubstantiated.
- Artvest has used questionable valuation methodology and unsupported assumptions in its valuation.
- It appears that the valuation conclusions stated by Artvest are unrealistically low.
- While the Artvest report frequently references the TEFAF 2014 Art Market Report, it omits relevant findings in the TEFAF report and misinterprets other findings.
- Artvest accepts and relies on Christie's valuations for a small portion of the entire collection, but there are concerns regarding Christie's valuations.
- The Artvest report does not provide sufficient information or justification for its valuation methodology or many of its assumptions.
- Artvest appears to be unclear about the concept and application of blockage discount.
- Artvest applies discounts to the final valuation, without offering sufficient supporting evidence that such discounts should be applied.

This review of the Artvest valuation report is organized into the following five sections:

Use of the TEFAF report  
Reliance on Christie's Valuation  
Valuation Methodology

Analysis and Application of Discounts  
Impacts of Artvest's Assumptions on Valuation

USE OF THE TEFAF REPORT:

While the Artvest report frequently references the TEFAF report, it disregards several key findings. In fact, in some instances, the conclusions drawn by Artvest appear to be counter to those of the TEFAF report.

(a) Performance of the Art Market by Sector as Interpreted by Artvest

Artvest's paragraph no. 23, Page 7, states,

*Four sectors of the art market constitute 98% of the value of the fine art market: European Modern Art, Impressionist and Post-Impressionist Art, European Old Masters Paintings, and Post-War and Contemporary Art. Of these four sectors, three have declined in value since 2011.*

This statement is somewhat misleading. It is clear from the charts in TEFAF and reproduced in the Artvest report, that value and volume both peaked in 2011. The fact is that 2011 appears to be an outlier. Artvest does not point out that the charts show that for all three sectors referenced, European Modern Art, Impressionist and Post-Impressionist Art, and European Old Masters, the 2012 and 2013 estimates of volume and sales exceed pre-recession levels.

While it is widely recognized that the Post-War and Contemporary Art Sector has been the most celebrated in the marketplace of late, this does not mean that the others have been in decline.

In paragraph no. 24, Artvest cites two recent evening auctions to support its conclusion regarding the Post-War and Contemporary Sector relative to other sectors. It is highly suspect to rely on only one or two observations when estimating or forecasting.

In paragraph no. 37, Artvest applies the discussion of the market performance of the major sectors to the DIA collection. Artvest states,

*"A significant segment of DIA's collection is in areas that have 'fallen out of favor' with collectors and that are underperforming their market peak in 2007, specifically American Art pre-1950 (14.6%), Old Master and 19<sup>th</sup> Century European Paintings (28.1%), Impressionist & Modern Art (23.8%), for a total of 66.5% of the collection."*

And yet, the TEFAF report states on Page 37 that the Modern Art sector “has more than doubled in value since the low point in 2009, and has grown by over four times in ten years.”

Regarding Impressionist and Post-Impressionist, the TEFAF report states on Page 38,

*This sector peaked in 2011 when total sales reached € 1.7 billion, an increase of over 140% from their low point in 2009. However, both values and volumes dropped in 2012 (by 26% and 14%, respectively), before returning to growth in 2013. Sales grew 9% in value year-on-year reaching € 1.4 euro billion, below the peak of 2011, but above any level previously recorded since 2000.*

And regarding Old Masters, the TEFAF report states,

*Old Masters is the smallest sector of fine art, with just 10% of the total value of sales. In 2013, like the Impressionist sector, it suffered from a scarcity of major works with the highest quality works appearing less frequently on the market.*

If some major works of the highest quality, with impeccable provenance from a highly regarded collection such as DIA, appeared on the market, it is quite likely that there would be great interest. It is suspect to claim that these major sectors have “fallen out of favor.”

Regarding the large, very popular and sales record holding Post-War and Contemporary Art Sector, Artvest suggests that this Sector has reached a peak. With the general economy improving, the continually increasing wealth at the high end of the income distribution worldwide, and continuing increased interest in art as investment by financial experts such as hedge fund managers, it is far from clear that the Post-War and Contemporary Sector has reached its peak.

(b) Key findings of TEFAF Report More Optimistic than Artvest

Several important findings listed in the TEFAF report, even included in its list of Key Findings featured at the beginning of the TEFAF report, are not mentioned in the Artvest report. These TEFAF findings give a much more favorable impression of the condition of the general art market than is implied in the Artvest report.

The first three key findings listed in the TEFAF “Key Findings” are the following:

Key Finding 1: “The international art market reached € 47.4 billion in total sales of art and antiques in 2013, close to its highest ever recorded total, and advancing 8% year-on-year.”

Key Finding 2: “The volume of transactions in the global market also increased in 2013, but by less than the growth of value, indicating that a significant part of the uplift of the market was due to higher priced works, rather than simply more works sold.”

Key Finding 3: Sales in the US in 2013 increased by 25% in value year-on-year, confirming its position as the key center worldwide for sales of the highest priced art.

(c) Relevance of TEFAF findings to DIA Valuation

Artvest’s references to the TEFAF report are included in this review only because the Artvest report appears to rely heavily on the TEFAF report.

The reality is that basing an appraisal on general art market trends can result in inaccurate valuations.

The DIA collection is noted to be exceptional. It is highly unusual for such a collection to be offered on the market, and the general art market trends that are analyzed in the TEFAF report and are reflected in various price indices, such as Mei-Moses (also referenced by Artvest), are not at all applicable to valuing such a unique and highly regarded collection.

As Artvest focused on such general analyses, a few words on their accuracy and usefulness should be mentioned.

Many sales are not reflected in such indices or reports. Even the TEFAF report states on Page 24,

*The transparency of prices and the public nature of sales data in the auction sector have made it the basis for much of the analysis and research into the art market. However even auction houses now increasingly involve themselves in private sales and online selling, both of which are often not in the public domain.*

It goes on to state that “in 2013 private sales at Christie’s increased 18% year-on-year to \$1.2 billion or 17% of their total sales in 2013. Sotheby’s private sales grew 30% to \$1.2 billion, also representing 17% of total sales.”

Articles in the press that compare art price indices to other more traditional investments can be interesting, however, art price indices are generally not helpful in appraising art. They are calculated on the basis of repeat sales at auction. Of course, other price indices, such as the Consumer Price Index or the S&P 500, etc., are also based on volume and price over time, but each share of common stock in a given corporation, say for example Microsoft, has identical value. Each work of art, even by the same artist, is likely to have a unique value. In the case of artworks, the

value depends on many factors, including provenance, style, rarity, condition, medium, size, frame, etc., and these are not reflected in the art price indices.

In addition, it is likely that any index of art prices based on repeat sales has an upward bias because many works that are sold at auction will return to the marketplace only if the value has increased. It is likely that, if at all possible, an owner of a highly valued work of art will attempt to wait out a down market. An art price index, thus, may not reflect the works that drop in value or even become unsalable.

#### RELIANCE ON CHRISTIE'S VALUATION

While the methodological approach to valuing the large quantity of works is not explained clearly in the Artvest report (more on this below), it is clear that much of the valuation is based on Christie's appraisal. Christie's had been retained to value 2,773 works in the collection, which Christie's was told represented the works purchased by the City of Detroit (COD). Artvest has accepted Christie's valuation for these works. In addition, Artvest applied average values by sector from the Christie's valuation to assign values to a large quantity of remaining works (57,181 works).

Christie's valuation of the 2,773 COD works was given as a range, from \$454 million to \$867 million.

It is a concern, but not surprising, that Christie's valuation of fair market value reads more like an auction catalog than a qualified appraisal. Normally, a qualified appraisal discusses and compares comparables, especially for the high value works. I did not see a discussion of comparables associated with the Christie's appraisal. In addition, the wide range of values given is highly unusual in a qualified appraisal.

It is not unusual to have a wide range of estimates for certain individual works in an auction catalog, but in the end there is one hammer price.

The value range presented by Christie's where the upper end of the range is almost double the lower end, is highly imprecise. And the fact that Artvest relies on this wide range of values to apply averages to the bulk of the works, causes the total valuation of the works by Artvest to be highly suspect.

#### VALUATION METHODOLOGY

It is impossible to review in detail the valuation methodology used by Artvest because there is insufficient support given for the value determinations.

Tables 1 and 2 of the Artvest report appear to be intended to summarize the methodology used by Artvest in valuing the works. However, there are few details provided.

As discussed above, Artvest relied on the Christie's valuation for the works purchased by COD. The Christie's valuation is straightforward, rather like an auction catalog with high and low estimates. (Again, there is no discussion of comparables by Christies.)

The following is my understanding of Artvest's approach to the valuation.

Artvest grouped COD works valued by Christie's into two groups:

**Group 1.** High value COD works that were appraised by Christie's for greater than \$750,000 (68 items); and **Group 2.** COD works appraised by Christie's of lower value, that under \$750,000, including property for which they assigned limited or no value (1,654 with value, 1,038 with limited to no value, and 13 that were combined in Phase III.)

Artvest then created three additional groups as follows: **Group 3.** High value Non-COD works in the DIA works (of works insured for greater than \$1 million) totaling 350 works; **Group 4.** Another 73 works based on a personal tour of the museum; and **Group 5.** Balance of the Collection.

The 350 works in Group 3 are listed, in spreadsheet form, attached as Exhibit G to the Artvest report. It appears that each value is based on a range of estimates from an auction catalog and not the hammer price, as is normally the case. In addition, while there is a column titled "summary of valuation support," in many cases what appears in this column is, "Summary not provided." Based on Exhibit G, approximately 50% of the works in this section were valued on the basis of comparables. Comparables are omitted for the other 50% of the works.

There are no comparables at all for the items in Group 4. The author states, "Based on a tour of objects on view in Museum in June 2014, another 73 works I determined to be High Value, which are likely to have values in the range of \$750,000 or higher." The author simply states, "As these were discoveries late in the process, I have put an approximate valuation on these items and will provide a fuller evaluation and documentation in a supplement to this report." [Note that I have not received a supplement, so this portion of the valuation cannot be reviewed, other than to say that the value assigned here is arbitrary.]

Values for the works in Group 5, the balance of the works, or 57,181 works, were based on Christie's valuation. The valuation of Group 5 is impossible to review due to the fact that insufficient details are provided. It is stated that "the balance of the DIA's collection was evaluated by sector using the sample valuation data of the COD works appraised by Christie's with a low value of at or below \$750,000, and applying an average price, sector by sector, based on that data."

The details, however, are not provided, so the reader does not know what are the average prices, sector by sector, that were applied. The reader further does not know the number of items in each sector. If a series of calculations was performed, a summary of such calculations should be provided, perhaps in the form of a spreadsheet, so the reader can fully understand and assess the methodology. It is worrisome that almost \$1 billion of value, representing 57,181 works, is based on non-transparent methodology.

On Page 19, the Artvest report states that for works with a value below \$5,000, a value of zero is attributed. This seems shortsighted in light of the large number of works in the collection (60,000). Obviously, if there are even 1000 works with a value of \$5,000, the cumulative value is five million dollars, not an insignificant value. While the author claims that neither Sotheby's nor Christie's would want to sell these works, there are many other market places for works of this value. And even Sotheby's recently announced the formation of a partnership with Ebay to sell more works online. This may result in far more sales by Sotheby's at the less than \$5,000 level.

Discussion of online sales in the TEFAF report states (page 28),

*The main focus of online companies has been on the middle market for authentic, original works worth between a few hundred euros to a maximum of around € 100,000...While worries over provenance and authenticity have tended to keep the online market focused on lower price points, this ceiling is gradually shifting upwards.*

The TEFAF report estimates that "online sales in the art market could grow at a rate of at least 25% per annum, meaning that they could exceed 10 billion euros by 2020."

An effort should be made to determine how many works are valued at \$5,000 and below before simply assigning a value of zero. Again, many works sold at the \$5,000 level may result in significant revenue. There is no evidence that either Christie's or Artvest attempted to inventory these works.

Using non-transparent methodology, omitting comparables, and making arbitrary unsupported assumptions to support valuation conclusions for such a large and important collection cause the reader to lack confidence in the Artvest valuation.

#### ANALYSIS AND APPLICATION OF DISCOUNTS

Perhaps the most curious statement in the entire document is paragraph no. 39 on page 26.

*In this section, I anticipate and quantify various different potential factors that, based on either current market conditions or historic precedent, are likely to have a financial effect on the sale of the art from the DIA collection. Many of these factors are not taken into account in any standard appraisal or fair market valuation. I also apply the discount factors for various sale scenarios.*

I have been consulted as an economist on art appraisals for the past 20 years, representing well over one hundred appraisals and hundreds of thousands of individual works of art making up these appraisals. I have never heard such a statement from a qualified appraiser.

A well documented, thorough valuation, whether is it based on marketable cash value, fair market value, or other, considers each and every factor that may influence a value conclusion.

In fact, in a fair market valuation of a large group of works, it is imperative that the application of a blockage discount be considered. There is no question that the appraisal assignment at hand involves a large group of works. There are over 66,000 works in the DIA collection.

The Artvest report discusses various separate discounts as follows:

1. Immediate liquidation discount
2. Blockage discount
3. Discount for unsold rates
4. Discount for not selling through Sotheby's or Christies
5. Discount for market capacity
6. Discount for a longer term sale process
7. Discount for a market backlash
8. Discount due to a PWC market crash

I maintain that at least four of these discounts would be encompassed by a properly executed blockage discount analysis.

The author references a narrow definition of the concept of blockage discount, and states that "the IRS's current practice of using a discounted number has ranged from 25% to 46%." The author has referenced dated tax cases and appears to be behind the times with respect to the application and determination of an appropriate level of a blockage discount.

I have been involved in valuation cases in which the percentage discount has been as low as 5% and as great as 99%. I have been consulted on blockage discount analysis for IRS appraisals, both for estate and for gift tax purposes, for insurance damages claims, for litigation involving injured parties, for gallery valuations, and more.



A blockage discount would be applied if immediate liquidation were required of a relatively large block of works. So, a liquidation discount would be covered by a proper blockage discount analysis.

The concept of blockage discount theoretically refers to the discount resulting from a large block of similar items being put on the market at one time, thus depressing the value. The concept, originally used in valuing securities, is relevant to valuation in the art market when a large block of similar works of art is put on the market at one time, or must be valued as of one point in time. Blockage discount must be considered whenever a mass appraisal (as defined by Standard 6 of the Uniform Standards of Professional Appraisal Practice) is conducted. It is especially relevant in valuing the estate of an artist or collector where the estate is comprised of many similar works. However, it is applicable in many other cases as well, as shown above.

If it is determined that a blockage discount should apply, then various factors must be considered. Wherever possible, the following factors are considered in the determination of blockage discount and/or the base valuation before a discount is applied:

- The reputation of the artist and the market's acceptance of the artist's work.
- The likelihood of future markets for the artist's work
- The date of the work relative to the artist's most popular style.
- The quality, size and condition of the work relative to the artist's best work.
- The location of the works relative to the location of the best marketplace for the works.
- The stability or permanence of the artist's reputation and the related expectation of appreciation or risk of depreciation of the works until they are likely to be sold.
- The length of time necessary for the market to absorb all of the work
- The determination that the works are part or all of a series by the artist
- The expected health of the art market and the general economy, especially the expected rate of price increase during the period of time it would take to sell the works.
- The carrying costs associated with selling the works over a long period of time, such as storage, insurance, maintenance, display and marketing.
- The opportunity cost of bulk purchase and long term resale of the works, or the relative returns that can be expected from alternative investments.
- The provenance and specifically, whether the artwork is currently the property of the artist or the artist's estate.
- Whether there are known collectors of these works who may be willing to buy a large block of these items at a non-discounted value.
- Sales before and after the date of valuation.

In determining an appropriate level of blockage discount, one would consider the impacts of an immediate liquidation, the impacts of the time value of money and thus a present value concept, and the impacts of the ability of the market to absorb the works given market capacity (or how many similar works can typically sell at a given time).

Artvest considers a separate discount for market capacity. Clearly, a blockage discount encompasses this consideration by taking account of how long it would take for the market to absorb the works.

In the case of the DIA collection, the application of a blockage discount does not seem appropriate. Even with limited marketing and far less than full information, I understand that there are indications of interest pending for the purchase of the full collection. In addition, as Artvest has astutely pointed out, the collection is highly important, describing it as "world class."

On Page 25, Artvest affirms the importance of the collection by stating, "A collection of the quality and range of the art in the DIA would be impossible to recreate in current times." And VWA has identified that there is general agreement among experts that the collection is extraordinary and one of a kind.

It is possible, upon a detailed inventory and valuation of the works, that some individual categories of works may be identified for which the application of a blockage discount would be appropriate. However, there is insufficient time to do this for the expansive collection, and in light of the importance of the overall collection, I would not recommend that a blockage discount be applied.

Again, four of the discounts suggested by Artvest (immediate liquidation discount, blockage discount, discount for market capacity, discount for a longer-term sale process) are encompassed by the concept of blockage discount, and it seems that the application of a blockage discount would not be appropriate in this case.

Turning to the remaining discounts suggested by Artvest, they include a discount for unsold rates, discount for not selling through Sotheby's or Christie's, discount for a market backlash, and discount due to a Post War and Contemporary Sector market crash.

Artvest applies a discount for "unsold rates." In some cases, works are unsold simply because the auction estimate was too high. One must be cautious in making assumptions based on unsold rates. A comprehensive appraisal would consider unsold rates if the type of work being valued had significant unsold works. In fact, in calculating blockage discount, I often consider works that actually sell as opposed to being offered for sale and remain unsold. Again, however, in the case of this collection, the assumptions should be that any works to be sold at auction are given the correct estimate, and that they are likely to sell.

Artvest points out that the likely marketplaces for works are Sotheby's and Christie's. They point out that the highest valued works are most successfully sold at these two major auction houses. As far as a discount for not selling through Sotheby's or Christie's, in my opinion the collection is so large that if it were to be sold, it would be most appropriate to distribute it among many auction houses, of which Sotheby's and Christie's are only two. Of course, the works should be consigned to the various auction houses on the basis of each house's experience and success in selling each type of work. The logical way to sell the works is to distribute the sales across various auction houses, and time the sales well, as a successful high profile sale from an important collection can encourage a higher price for a lower valued piece from the same collection.

I also think that a discount for a market backlash is inappropriate. Again, the collection is highly important and visible, and any potential buyer would know the reason for the sale. The DIA potential sale is beyond the control of the DIA, and potential buyers will know this. VWA has compiled many examples of public collections selling works without Artvest's so-called backlash discount. In some cases, the provenance of having been part of an important public collection may increase the value.

Regarding a discount for an impending Post-War and Contemporary Art market crash, a qualified appraisal values the collection as of a single date, the date of valuation. There has not been a Post-War and Contemporary art market crash as of the date of valuation. And there is no evidence that such a crash is likely in the near future.

In my opinion, no discounts should be applied to the valuation of works of art in the DIA collection.

#### IMPACT OF ARTVEST'S ASSUMPTIONS ON VALUATION

Many of the various unsupported assumptions and value adjustments made by Artvest have the effect of decreasing the valuation of the collection.

For example, in Tables 6 and 7, where Artvest applies various discounts (discounts that I think should not be taken at all), the calculations were done for only the low estimate and the mid estimate from Table 2, not for the high estimate. No explanation is given for omitting the high estimate in these calculations.

Regarding its Unsold Discount Factor, in the narrative (page 28), Artvest states

*It is customary business practice to devalue a work by 20% of the low estimate after it has been 'bought in' – auction terminology for a work of art going unsold.*

And then in the Tables 6 and 7, the Unsold Discount Factor is not printed, but based on the quantity of the discount, it can be determined that Artvest applied a discount closer to 25%, without giving further explanation.

Some of the discount factors used by Artvest are entirely arbitrary. For example, on Page 29, it is stated,

*The Impact of Not Selling through Sotheby's or Christie's is a subjective number to calculate...Nevertheless, I estimate that the impact of selling the DIA collection through an auction venue other than these two houses would result, at a minimum, of a loss value of 20% to 40%.*

Artvest did indeed apply the arbitrary discount of 20% in this case.

In the discussion about the Effect of Longer Term Sale Process (which, as explained above, should be encompassed into a proper blockage discount analysis, if relevant to the valuation assignment), Artvest bases its estimate of the number of years to sell on the experience of the British Rail Pension Fund, and then approximately doubles it. The British Rail Pension Fund situation is not comparable to the DIA situation. The works in the Pension Fund were purely for investment, quite unlike the collection of a renowned museum. And the sale experience of the Pension Fund's works is dated. It would be more accurate to base it on an analysis of similar works (and numbers of them) that have appeared on the market in recent years. Also, Artvest used a discount rate of 12% for the discounted present value calculation, which seems a bit high in light of the currently low level of interest rates. The choice of an appropriate discount rate in present value calculations is always subject to controversy. A relatively high discount rate will decrease the present value, and a low discount rate will increase the present value. Frequently in a blockage discount analysis, as in business valuation, the long-term Treasury security rate is viewed as a risk free rate of return, the minimum to which upward adjustments are made to reflect different elements of risk. With long-term Treasury security rates currently in the 3% to 4% range, a discount rate of 12% seems high even in light of the increased risk associated with holding art.

#### CONCLUSION:

This valuation assignment is difficult due to the vast number of varied works, the quality of the collection, its provenance and its notoriety. Such a complex appraisal requires significant due diligence and a logical, transparent, and defensible methodological approach. Any assumptions used must be justified, using support well beyond any one individual's personal opinion.

In the case of any collection, I always recommend that a well-supported, defensible appraisal be the goal. There are many cases where incomplete information and/or time constraints cause a valuation to be rushed and short cuts to be taken.

However, there are logical analytical approaches to sampling that should be applied to achieve the most accurate valuation.

As evidenced by the comments throughout this review, the Artvest valuation report is flawed and thus does not provide a reliable, well-supported valuation of the DIA collection of works. Statements of value and of underlying economic constructs are often stated as the opinion of one individual who is neither a qualified appraiser nor an economist with economic education beyond the undergraduate level. Unless and until support can be produced for the claims made in this report, the valuations cannot be considered reliable.

Finally, the application of a variety of discounts, arbitrarily selected without solid justification, suggests that Artvest or the author of the report may be purposefully valuing the collection conservatively rather than objectively and accurately.

Submitted By: Jannette M. Barth, Ph.D.  
Economist and Managing Director  
Pepacton Institute LLC

**Attachment D**

**Select Slides from Uniform Standards of Professional Appraisal Standards course material  
written by the Appraisal Foundation**

NYU USPAP 2014 PPPPT-Day1A.pdf (page 8 of 111)

# INTRODUCTION

## The Purpose of USPAP

SM Page 1-1

- Clients hire appraisers to resolve appraisal problems...
- *USPAP EXISTS to promote and maintain a high level of **PUBLIC TRUST** in appraisal practice by establishing requirements for appraisers.*

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SM Page 1-1  
Day 1—Slide 9

NYU USPAP 2014 PPPPT-Day1A.pdf (page 9 of 111)

# INTRODUCTION

## The Purpose of USPAP

SM Page 1-1

- USPAP provides
- Common basis for comparison
- Reference source
- Basis for uniform enforcement for state regulatory agencies
- Reason for clients, other intended users, and the public to place their **TRUST** in the services performed by professional appraisers

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SM Page 1-1  
Day 1—Slide 10

NYU USPAP 2014 PPPPT-Day1A.pdf (page 15 of 111)

# INTRODUCTION TO USPAP

## History of Appraisal Standards SM Part 1-4

Three critical issues recognized

- Providing **credible** appraisal services
- Ethical and competent individuals
- Professional services that create **public trust**

© 2014 by The Appraisal Foundation SM Part 1-4  
Day 1—Slide 16



**Attachment E**

**DIA Inventory Page, Missing Photograph Example**



Unknown, American

Walt Whitman

United States

Half tone print

*Gift of Mr. and Mrs. Charles E. Feinberg*

PROVENANCE

*not documented*

DIA no. F78.125

Unknown, American

(Untitled)

1977

Color lithograph

*Gift of Marshall Schuster*

PROVENANCE

*not documented*

DIA no. F78.130.1

Unknown, American

(Untitled)

1977

Color lithograph

*Gift of Marshall Schuster*

**Attachment F**

**DIA Inventory Page, Mislabeled “Unknown, American” Examples**



Unknown, American

Fragment of Tiraz Textile

Egypt, Fatimid, 12th Century

Weft faced plain weave with eccentric and discontinuous wefts (tapestry); one end hemmed with linen in whip stitch

2 3/4 x 5 in. ( 6.99 x 12.70 cm)

Pressure-mounted with 29.393.

*City of Detroit Purchase*

**PROVENANCE**

*Formerly in the collection of:*

*Dorothea Russell*

**DIA no. 29.401**



Unknown, American

Fragment of Tiraz Textile

Egypt, Fatimid, 12th Century

Balanced plain weave (tabby); weft faced plain weave with discontinuous wefts (tapestry)

8 3/8 x 4 5/8 in.

21.4 x 11.6 cm

*City of Detroit Purchase*

**PROVENANCE**

*Formerly in the collection of:*

*Dorothea Russell*

**DIA no. 29.402**





**Unknown, American**

Transylvanian-Church-style 'Lotto' Rug

Ushak, Western Anatolia, Turkey, Ottoman, 17th Century

Wool

67 1/2 x 46 in.

*Gift of Mr. and Mrs. Harold J. Quilhot*

**PROVENANCE**

*Ex coll.*

*Vincent D. Cliff (Detroit)*

*Mary Cliff (Mrs. J. F. Brandmier), daughter of V.D. Cliff*

*Harold J. Qilhot*

**DIA no. 70.926**



**Unknown, American**

"Lotto" Rug with Arabesque Design

Ushak, Western Turkey, Turkey, Ottoman, c. 1550/1600

Wool pile on a wool foundation

135 x 77 in.

342 x 195 cm

*Gift of Dr. Eva Cassirer, 2000*

**PROVENANCE**

*From the collection of Alfred Cassirer, lent to the DIA by his daughter, Eva Cassirer from 1948-2002. In 2002, most of the Cassirer carpets went back to Berlin, but this one was left as a gift to the DIA.*

**DIA no. F49.7**

**Attachment G**

**Article on *L'incanto dell'affresco***

# Italy: The charm of the frescoes

6-06-2014

Filed under [News](#), [The Church in the world](#)



Under the title “*L’incanto dell’affresco*” (the charm of the fresco), the Museum of Art in Ravenna is displaying 110 frescos: “detached masterpieces from Pompeii to Giotto, from Correggio to Tiepolo”. The exhibition, which will run until June 15, 2014, was organized by **Claudio Spadoni**, artistic director of the Museum, and **Lucia Ciancabilla**. It is divided into six sections, arranged in chronological order of their detachment, thus tracing the history and the popularity of the practice of detaching wall paintings. This display of paintings that have been wrested from walls and partitions of public, religious or private monuments, reviews the three chief methods of cutting out frescoes, their restoration, and also the conservation of the ancient heritage of Italian painting, with extremely valuable loans from places in Italy and abroad.

The first stages of detachment go back to Vitruvius and Pliny, where the removal of frescoes is done together with part of the supporting wall, as was the case with the *Face of Christ* by Fra Angelico or Melozzo de Forlì’s music-making *Angels*. Until the late 19<sup>th</sup> century, a large number of masterpieces of Italian painting were snatched from the vaulted ceilings of churches and chapels, from the walls of public and private buildings that had housed them for centuries, in order to transport them to safer places.... Behind the evident needs for conservation there were often hidden motives of the collectors.

On this occasion, the Museum of Art in Ravenna, housed in a 16<sup>th</sup>-century building, is displaying several of the most beautiful paintings of Pompeii and Herculaneum, as well as others by Giotto, Buffalaco, Altichiero, Vitale da Bologna, Pisanello, Signorelli, Pontormo, and Tiepolo, to mention only a few.

On the Adriatic coast, in Emilia-Romagna, the city of Ravenna had as its first bishop Saint **Apollinaris**, who had come from Antioch to Rome with Saint **Peter** and died a martyr on July 23, 87 A.D.; he was buried in Classe, the port of Ravenna. The capital of the Roman Empire in the 5<sup>th</sup> century, and then of Byzantine Italy until the 8<sup>th</sup> century, Ravenna has a set of early Christian mosaics and monuments unlike any other in the world. Eight buildings—the Mausoleum of Galla Placidia, the Neonian Baptistry, the Basilica of Sant’Apollinare Nuovo, the Baptistry of the Arians, the Archiepiscopal Chapel, the Mausoleum of Theodoric, the Church of San Vitale, and the Basilica of Sant’Apollinare in Classe—were built in the 5<sup>th</sup> and 6<sup>th</sup> centuries and testify to a great artistic mastery that marvelously combines the Greco-Roman tradition, Christian iconography and the styles of East and West.

Museum of Art of Ravenna (MAR) – Via di Roma, 13 – 48100 Ravenna.

Until June 15, 2014; open from 9:00 to 18:00 Tuesday through Friday, until 19:00 on Saturday and Sunday; closed Monday; admission: 9 Euros; teachers, students, pupils: 4 Euros

*(Sources: MAR/Unesco/Osservatore Romano – DICI no. 296 dated June 06, 2014)*



**Attachment H**

**Methodology Step by Step Chart**

**Methodology Step by Step Chart**

Step 1	Valuation of High-Value Works by VWA			
	<u># of Units</u>	<u>Low Value</u>	<u>High Value</u>	<u>Average Value</u>
	387	3,092,419,700	4,040,303,800	3,566,631,750
Step 2	Valuation of High-Value Works performed by Christie's, Artvest and Winston			
	<u># of Units</u>			<u>Average Value</u>
	596			311,370,325
Step 3	Projected valuation of works on DIA Insurance List (estimated for appreciation)			
	<u># of Units</u>	<u>DIA Insurance Value</u>	<u>% Appreciation</u>	<u>Projected Value</u>
	16,388	468,449,537	62.0%	758,888,249
Step 4	Pricing matrix of remaining works based on Christie's and Southeby's 2013 sales price by department			
	<u># of Units</u>			<u>Average Value</u>
	42,854			3,512,612,030
Step 5	Combined Value			
	<u># of Units</u>			<u>Average Value</u>
	<b>60,225</b>			<b>8,149,232,354</b>

**Attachment I**

**Step 1 Attachment**

<b>DIA Accession No.</b>	<b>Artist</b>	<b>Title</b>	<b>VWA Low Value</b>	<b>VWA High Value</b>	<b>VWA Average Value</b>
30.374	Pieter Bruegel the Elder	The Wedding Dance	150,000,000	200,000,000	175,000,000
22.13	Vincent Willem van Gogh	Self Portrait	120,000,000	150,000,000	135,000,000
1996.25	Vincent Willem van Gogh	Portrait of Postman Roulin	90,000,000	130,000,000	110,000,000
27.200	Rembrandt Harmensz van Rijn	The Visitation	90,000,000	110,000,000	100,000,000
70.190	Pablo Picasso	Melancholy Woman	75,000,000	100,000,000	87,500,000
76.89	Frederic Edwin Church	Cotopaxi	60,000,000	90,000,000	75,000,000
1988.175	Alberto Giacometti	Standing Woman II	60,000,000	80,000,000	70,000,000
22.14	Henri Matisse	The Window	60,000,000	80,000,000	70,000,000
65.8	Mark Rothko	Orange, Brown	60,000,000	80,000,000	70,000,000
73.268	Michelangelo Merisi da Caravaggio	Martha and Mary Magdalene	60,000,000	80,000,000	70,000,000
70.160	Paul Cezanne	Madame Cezanne	55,000,000	75,000,000	65,000,000
70.193	Pablo Picasso	Woman Seated in an Armchair	60,000,000	70,000,000	65,000,000
70.159	Vincent Willem van Gogh	Bank of the Oise at Auvers	50,000,000	70,000,000	60,000,000
76.78	Barnett Newman	Be I (second version)	50,000,000	70,000,000	60,000,000
31.25	Neo-Babylonian	Snake-Dragon, Symbol of Marduk, the Patron God of Babylon; Panel from the Ishtar Gate	50,000,000	60,000,000	55,000,000
65.310	Clyfford Still	Untitled 1951-T, No. 2	50,000,000	60,000,000	55,000,000
68.292.1	Andy Warhol	Self Portrait: Former Double Self Portrait	50,000,000	60,000,000	55,000,000
70.175	Henri Matisse	Poppies	50,000,000	60,000,000	55,000,000

27.2.A	Michelangelo	Scheme for the Decoration of the Ceiling of the Sistine Chapel	45,000,000	60,000,000	52,500,000
46.309	James Abbott McNeill Whistler	Nocturne in Black and Gold, the Falling Rocket	40,000,000	60,000,000	50,000,000
55.353	Francis Bacon	Study for Crouching Nude	45,000,000	55,000,000	50,000,000
50.32	Neo-Assyrian	Tiglath-Pileser III Receiving Homage	40,000,000	50,000,000	45,000,000
2005.60	Pablo Picasso	Girl Reading	35,000,000	45,000,000	40,000,000
21.5	Edgar Degas	Dancers in the Green Room	30,000,000	50,000,000	40,000,000
22.143	Auguste Rodin	The Thinker	35,000,000	40,000,000	37,500,000
70.174	Henri Matisse	Coffee	35,000,000	40,000,000	37,500,000
78.37	Henri Matisse	The Wild Poppies	35,000,000	40,000,000	37,500,000
66.66	Joan Miró	Self Portrait II	30,000,000	40,000,000	35,000,000
70.183	Georges Pierre Seurat	View of Le Crotoy from Upstream	30,000,000	40,000,000	35,000,000
36.11	Nicolas Poussin	Selene and Endymion	30,000,000	38,000,000	34,000,000
64.117	John Constable	The Glebe Farm	30,000,000	35,000,000	32,500,000
78.31	Henri Matisse	The Wild Poppies	30,000,000	35,000,000	32,500,000
56.144	Franz Marc	Animals in a Landscape	28,000,000	36,000,000	32,000,000
89.63	Peter Paul Rubens	The Meeting of David and Abigail	25,000,000	35,000,000	30,000,000
65.7	Franz Kline	Siskind	28,000,000	30,000,000	29,000,000
64.84	Juan Gris	Still Life	25,000,000	30,000,000	27,500,000
17.17	George Wesley Bellows	A Day in June	20,000,000	30,000,000	25,000,000

50.138	George Caleb Bingham	The Trappers' Return	20,000,000	30,000,000	25,000,000
57.234	Wassily Kandinsky	Study for Painting with White Form	22,000,000	28,000,000	25,000,000
70.177	Pierre Auguste Renoir	Seated Bather	20,000,000	30,000,000	25,000,000
1985.24	Pierre Auguste Renoir	Woman in an Armchair	20,000,000	25,000,000	22,500,000
21.71	Claude Monet	Gladioli	20,000,000	25,000,000	22,500,000
26.3	Jacob Isaaksz van Ruisdael	The Jewish Cemetery	20,000,000	25,000,000	22,500,000
35.10	Titian	Judith with the Head of Holofernes	20,000,000	25,000,000	22,500,000
40.166	Bernardo Bellotto	View of the Tiber in Rome with the Castel Sant'Angelo	20,000,000	25,000,000	22,500,000
42.57	Agnolo Bronzino	Eleonora of Toledo and Her Son	20,000,000	25,000,000	22,500,000
46.310	John Singleton Copley	Watson and the Shark	20,000,000	25,000,000	22,500,000
55.410	Max Beckmann	Self Portrait in Olive and Brown	20,000,000	25,000,000	22,500,000
70.161	Paul Cezanne	Mont Sainte-Victoire	20,000,000	25,000,000	22,500,000
70.163	Paul Cezanne	The Three Skulls	20,000,000	25,000,000	22,500,000
1988.176	Pablo Picasso	Seated Woman	18,000,000	22,000,000	20,000,000
53.145	Auguste Rodin	Eve	18,000,000	22,000,000	20,000,000
55.5.A	Henry Fuseli	The Nightmare	18,000,000	22,000,000	20,000,000
60.88	Alberto Giacometti	Annette Seated	18,000,000	22,000,000	20,000,000
62.126	Pablo Picasso	Portrait of Manuel Pallares	18,000,000	22,000,000	20,000,000
70.162	Paul Cezanne	Bathers	18,000,000	22,000,000	20,000,000

77.81	Hans Holbein the Younger	A Woman	18,000,000	22,000,000	20,000,000
1988.177	Willem de Kooning	Merritt Parkway	16,000,000	20,000,000	18,000,000
69.306	Paul Gauguin	Self Portrait	15,000,000	20,000,000	17,500,000
70.191	Pablo Picasso	Head of a Harlequin	15,000,000	20,000,000	17,500,000
89.35	Jan Provost	The Last Judgment	15,000,000	20,000,000	17,500,000
66.36	David Smith	Cubi I	15,000,000	18,000,000	16,500,000
70.192	Pablo Picasso	Bottle of Anis del Mono	15,000,000	18,000,000	16,500,000
26.114	Neri di Bicci	Tobias and Three Archangels	12,000,000	16,000,000	14,000,000
30.297	Michael Sweerts	In the Studio	12,000,000	16,000,000	14,000,000
49.347	Frans Hals	Portrait of Hendrik Swalmius	12,000,000	16,000,000	14,000,000
69.6	Guido Reni	The Angel Appearing to St. Jerome	12,000,000	16,000,000	14,000,000
1992.1	Roy Lichtenstein	Interior with Mirrored Closet	12,000,000	15,000,000	13,500,000
70.167	Edgar Degas	Violinist and Young Woman	12,000,000	15,000,000	13,500,000
77.2	Benozzo Gozzoli	Virgin and Child with Angels	12,000,000	15,000,000	13,500,000
89.46	Jan Havicksz Steen	Gamblers Quarreling	12,000,000	15,000,000	13,500,000
30.280	Antoine Le Nain	The Village Piper	12,000,000	14,000,000	13,000,000
52.220	Giovanni Lorenzo Bernini	Chair of St. Peter	10,000,000	15,000,000	12,500,000
52.253	Artemisia Gentileschi	Judith and Her Maidservant with the Head of Holofernes	10,000,000	15,000,000	12,500,000
70.178	Pierre Auguste Renoir	The White Pierrot	10,000,000	15,000,000	12,500,000

40.58	Ernst Ludwig Kirchner	Winter Landscape in Moonlight	11,000,000	13,000,000	12,000,000
89.70	Bartolome Esteban Murillo	The Immaculate Conception	11,000,000	13,000,000	12,000,000
10.11	Frederic Edwin Church	Syria by the Sea	10,000,000	12,000,000	11,000,000
28.115	Giovanni Bellini	Madonna and Child	10,000,000	12,000,000	11,000,000
44.266	Peter Paul Rubens	Hygeia, Goddess of Health	10,000,000	12,000,000	11,000,000
69.50	Donald Judd	Stack	10,000,000	12,000,000	11,000,000
71.170	Thomas Gainsborough	Lady Anne Hamilton	10,000,000	12,000,000	11,000,000
1993.18	John Singer Sargent	Mosquito Nets	8,000,000	12,000,000	10,000,000
69.48	Robert Rauschenberg	Creek	9,000,000	11,000,000	10,000,000
70.158	Vincent Willem van Gogh	The Diggers	8,000,000	12,000,000	10,000,000
71.1	Guercino (Giovanni Francesco Barbieri)	Assumption of the Virgin	8,000,000	12,000,000	10,000,000
70.339	Pablo Picasso	Bather by the Sea	8,000,000	11,000,000	9,500,000
71.169	Thomas Gainsborough	The Honorable Richard Savage Nassau de Zuylestein, M.P.	8,000,000	10,000,000	9,000,000
71.390	Jean Honore Fragonard	The Shepherdess	8,000,000	10,000,000	9,000,000
71.391	Jean Honore Fragonard	The Grape Gatherer	8,000,000	10,000,000	9,000,000
71.392	Jean Honore Fragonard	The Reaper	8,000,000	10,000,000	9,000,000
71.393	Jean Honore Fragonard	The Gardener	8,000,000	10,000,000	9,000,000
77.1.1	Fra Angelico	Annunciatory Angel	8,000,000	10,000,000	9,000,000
24.94	Sassetta	The Procession to Calvary	7,000,000	10,000,000	8,500,000



26.296	Jean Siméon Chardin	Still Life with Dead Hare	7,000,000	10,000,000	8,500,000
48.96	Bartolome Esteban Murillo	The Flight into Egypt	7,000,000	9,000,000	8,000,000
69.1	Jean Dubuffet	Le plomb dans l'aile	7,000,000	9,000,000	8,000,000
1998.65	Edgar Degas	Jockeys on Horseback before Distant Hills	7,000,000	8,000,000	7,500,000
20.111	Pierre Auguste Renoir	Graziella	6,000,000	9,000,000	7,500,000
26.385	Peter Paul Rubens	Philippe Rubens, the Artist's Brother.	6,000,000	9,000,000	7,500,000
1988.178	Pablo Picasso	Fruit, Carafe and Glass	6,000,000	8,000,000	7,000,000
23.27	Frans Hals	Portrait of a Woman	6,000,000	8,000,000	7,000,000
25.4	Jan van Eyck	Saint Jerome in His Study	6,000,000	8,000,000	7,000,000
26.387	Master of the St. Lucy Legend	Virgin of the Rose Garden	6,000,000	8,000,000	7,000,000
27.385	Titian	Man Holding a Flute	6,000,000	8,000,000	7,000,000
30.295	Parmigianino	The Circumcision	6,000,000	8,000,000	7,000,000
34.27	James Abbott McNeill Whistler	Arrangement in Gray: Portrait of the Painter	6,000,000	8,000,000	7,000,000
41.80	Francisco Goya	Dona Amalia Bonells de Costa	6,000,000	8,000,000	7,000,000
53.356	Peter Paul Rubens	Briseis Given Back to Achilles	6,000,000	8,000,000	7,000,000
65.10	Gerard Ter Borch	Lady at Her Toilette	6,000,000	8,000,000	7,000,000
68.47	Orazio Gentileschi	Young Woman with a Violin (Saint Cecilia)	6,000,000	8,000,000	7,000,000
21.206	Max Pechstein	Under the Trees	5,000,000	8,000,000	6,500,000
21.34	Camille Pissarro	The Path	5,000,000	8,000,000	6,500,000

27.202	Gustave Courbet	Bather Sleeping by a Brook	5,000,000	8,000,000	6,500,000
82.64	Neo-Sumerian	Gudea of Lagash	5,000,000	8,000,000	6,500,000
21.208	Lyonel Feininger	Sidewheeler II	5,000,000	7,000,000	6,000,000
21.6	Edgar Degas	Dancers	5,000,000	7,000,000	6,000,000
37.147	Pollaiuolo	Judith	5,000,000	7,000,000	6,000,000
46.134	Thomas Cole	From the Top of Kaaterskill Falls	5,000,000	7,000,000	6,000,000
51.65	Otto Dix	Self Portrait	5,000,000	7,000,000	6,000,000
67.113	Alexander Calder	The X and Its Tails	5,000,000	7,000,000	6,000,000
70.170	Jean Auguste Dominique Ingres	Perseus and Andromeda	5,000,000	7,000,000	6,000,000
76.77	Aristide Maillol	La Flore, nue	5,000,000	7,000,000	6,000,000
77.3	Pietro Perugino	Madonna and Child	5,000,000	7,000,000	6,000,000
1993.77.A	Joseph Cornell	Night Songs	5,000,000	6,500,000	5,750,000
57.180	Giovanni Battista Tiepolo	Girl with a Mandolin	5,000,000	6,500,000	5,750,000
22.6	Mary Cassatt	In the Garden	5,000,000	6,000,000	5,500,000
27.3	Sandro Botticelli	The Resurrected Christ	5,000,000	6,000,000	5,500,000
27.201	Gerard David	The Annunciation	4,000,000	6,000,000	5,000,000
45.420	Joos van der Beke van Cleve	Adoration of the Magi	4,000,000	6,000,000	5,000,000
54.458	William Adolphe Bouguereau	The Nut Gatherers	4,000,000	6,000,000	5,000,000
61.48	Joan Miró	Women and Bird in the Night	4,000,000	6,000,000	5,000,000

66.41	Giulio Romano	An Allegory of Immortality	4,000,000	6,000,000	5,000,000
79.34	Eva Hesse	Accession II	4,000,000	6,000,000	5,000,000
25.207	Giovanni Domenico Tiepolo	The Women of Darius Invoking the Clemency of Alexander	4,000,000	5,000,000	4,500,000
29.260	William Merritt Chase	The Whistling Boy	3,500,000	5,500,000	4,500,000
52.218	Giovanni Lorenzo Bernini	Triton with a Sea Serpent	4,000,000	5,000,000	4,500,000
52.219	Giovanni Lorenzo Bernini	Triton with a Shell	4,000,000	5,000,000	4,500,000
27.159	Maurice Brazil Prendergast	Promenade	3,500,000	5,000,000	4,250,000
70.164	Jean Siméon Chardin	Still Life	3,500,000	5,000,000	4,250,000
11.5	Childe Hassam	Place Centrale and Fort Cabanas, Havana	3,000,000	5,000,000	4,000,000
1995.67	Rachel Ruysch	Flowers in a Glass Vase	3,000,000	5,000,000	4,000,000
20.114	Alfred Sisley	Church at Moret after the Rain	3,000,000	5,000,000	4,000,000
21.203	Oskar Kokoschka	The Elbe Near Dresden	3,500,000	4,500,000	4,000,000
23.11	Tintoretto	The Dreams of Men	3,000,000	5,000,000	4,000,000
29.256	Gerard Ter Borch	Young Man Reading a Letter	3,000,000	5,000,000	4,000,000
54.2	Nicolas Poussin	The Holy Family	3,000,000	5,000,000	4,000,000
62.141	Pablo Picasso	Sylvette	3,000,000	5,000,000	4,000,000
72.465	Paul Cezanne	Head of a Man	3,000,000	5,000,000	4,000,000
79.33	Benjamin West	Death on the Pale Horse	3,000,000	5,000,000	4,000,000
56.43	Giovanni Paolo Panini	Interior of St. Peter's, Rome	3,500,000	4,000,000	3,750,000

1983.23	John Singleton Copley	George Boone Roupell	3,000,000	4,000,000	3,500,000
1986.60	Mary Cassatt	Alexander J. Cassatt	3,000,000	4,000,000	3,500,000
21.204	Ernst Ludwig Kirchner	Coastal Landscape on Fehmarn	3,000,000	4,000,000	3,500,000
27.556	John Singleton Copley	Mrs. Clark Gayton	3,000,000	4,000,000	3,500,000
28.151	Unknown	South Indian Brahma-Shiva	3,000,000	4,000,000	3,500,000
37.21	Jacob Isaaksz van Ruisdael	Farm and Hayrick on a River	3,000,000	4,000,000	3,500,000
38.60	William Sydney Mount	The Banjo Player	3,000,000	4,000,000	3,500,000
48.279	Edgar Degas	Morning Ride	3,000,000	4,000,000	3,500,000
60.61	Master of the Osservanza	The Resurrection	3,000,000	4,000,000	3,500,000
61.164	Master of the Arenberg Lamentation	The Lamentation	3,000,000	4,000,000	3,500,000
61.165	John Sloan	Wake of the Ferry, No. 1	3,000,000	4,000,000	3,500,000
65.139	Paul Cezanne	Skull and Book	3,000,000	4,000,000	3,500,000
65.76	John Chamberlain	Coo Wha Zee	3,000,000	4,000,000	3,500,000
68.298	Jacob Isaaksz van Ruisdael	Wooded Landscape with a Stream	3,000,000	4,000,000	3,500,000
72.441	Edgar Degas	Dancers in Repose	3,000,000	4,000,000	3,500,000
77.48	Robert Motherwell	Elegy to the Spanish Republic #131	3,000,000	4,000,000	3,500,000
78.59	John Everett Millais	Leisure Hours	3,000,000	4,000,000	3,500,000
21.72	John Singer Sargent	Home Fields	2,800,000	4,000,000	3,400,000
08.8	Mary Cassatt	Women Admiring a Child	2,800,000	3,500,000	3,150,000

80.104	Dan Flavin	Monument for V. Tatlin	2,800,000	3,500,000	3,150,000
73.41	John Singer Sargent	Madame Paul Poirson	2,500,000	3,700,000	3,100,000
19.148	Robert Cozad Henri	The Young Girl	2,500,000	3,500,000	3,000,000
24.2	John Sloan	McSorley's Bar	2,500,000	3,500,000	3,000,000
28.102	Giorgio de Chirico	Gladiators and Lion	2,000,000	4,000,000	3,000,000
30.296	Thomas Cowperthwaite Eakins	Dr. Horatio C. Wood	2,500,000	3,500,000	3,000,000
44.5	Marsden Hartley	Log Jam, Penobscot Bay	2,500,000	3,500,000	3,000,000
65.60	Helen Frankenthaler	The Bay	2,500,000	3,500,000	3,000,000
70.560.A	John Singleton Copley	Colonel George Lewis	2,500,000	3,500,000	3,000,000
77.5	Diego M. Rivera	Edsel B. Ford	2,500,000	3,500,000	3,000,000
21.210	Otto Mueller	Bathers	2,500,000	3,200,000	2,850,000
16.5	William Merritt Chase	The Yield of the Waters	2,500,000	3,000,000	2,750,000
1986.102	Max Ernst	Moonmad	2,500,000	3,000,000	2,750,000
43.30	John Singleton Copley	John Gray	2,500,000	3,000,000	2,750,000
70.900	John Singleton Copley	Hannah Loring	2,500,000	3,000,000	2,750,000
41.37	John Singleton Copley	Colonel John Montresor	2,200,000	3,200,000	2,700,000
27.150	Nino Pisano	Madonna and Child	2,000,000	3,000,000	2,500,000
44.213	Giovanni Battista Tiepolo	Saint Joseph and the Christ Child	2,000,000	3,000,000	2,500,000
71.168	John Singleton Copley	Mrs. Benjamin Hallowell	2,200,000	2,800,000	2,500,000

72.437	Naum Gabo	Linear Construction No. 4	2,200,000	2,800,000	2,500,000
30.416	Islamic	Bottle made for the Rasulid Sultan Hizabr al-Din in Yemen	2,300,000	2,600,000	2,450,000
21.8	Edgar Degas	Portrait of a Woman	2,000,000	2,500,000	2,250,000
30.323	Islamic	Qur'an	2,000,000	2,500,000	2,250,000
54.460	Emil Nolde	Sunflowers	2,000,000	2,500,000	2,250,000
1985.25	Pierre Auguste Renoir	Clearing in the Woods	1,800,000	2,500,000	2,150,000
74.53	Roman	Torso of Aphrodite, Roman copy of the Venus Genetrix type	1,500,000	2,500,000	2,000,000
76.146	Sebastiano Ricci	Christ at the Sea of Galilee	1,800,000	2,200,000	2,000,000
78.47	Iranian	Achaemenid Persian Spearman	1,500,000	2,500,000	2,000,000
71.385.A	Richard Artschwager	Hospital Ward	1,700,000	2,000,000	1,850,000
2000.85	Medici Manufactory	Ewer (brocca)	1,300,000	2,300,000	1,800,000
70.206	Henri Matisse	Seated Nude	1,700,000	1,900,000	1,800,000
41.126	Master of the Tiburtine Sibyl	Crucifixion	1,500,000	2,000,000	1,750,000
64.155.A	Robert Indiana	The Brooklyn Bridge	1,500,000	2,000,000	1,750,000
69.304	Auguste Rodin	The Age of Bronze	1,500,000	2,000,000	1,750,000
1983.16	Jean Baptiste Carpeaux	Genius of the Dance	1,500,000	1,800,000	1,650,000
1992.223	Jean Baptiste Carpeaux	Genius of Dance	1,500,000	1,800,000	1,650,000
45.514	Andrea della Robbia	Madonna and Child	1,500,000	1,800,000	1,650,000
25.64	Islamic	Figure of a Courtier from a Palace Frieze	1,200,000	1,800,000	1,500,000

29.245	Unknown	Buddha	1,200,000	1,800,000	1,500,000
59.123	Hubert Gerhard	Hebe	1,400,000	1,600,000	1,500,000
59.296	Johann Joachim Kaendler	Postmaster "Baron" Schmiedel	1,400,000	1,600,000	1,500,000
52.118	John Singleton Copley	Head of a Negro	1,200,000	1,500,000	1,350,000
43.477	Andrea della Robbia	Head of a Youth	1,200,000	1,400,000	1,300,000
2001.67	Francois Rude	Departure of the Volunteers of 1792 (The Marseillaise)	1,000,000	1,500,000	1,250,000
64.82	Jean Auguste Dominique Ingres	Mlle. Cécile-Marie Panckoucke (later Mme. Jacques-Raoul Tournouër)	1,000,000	1,500,000	1,250,000
70.168	Edgar Degas	Woman with a Bandage	1,000,000	1,500,000	1,250,000
19.149	Robert Cozad Henri	The Beach Hat	1,000,000	1,400,000	1,200,000
71.78	Edgar Degas	Seated Woman Wiping her Left Side	1,000,000	1,200,000	1,100,000
54.100	John Singer Sargent	Judith Gautier	900,000	1,200,000	1,050,000
21.207	Karl Schmidt-Rottluff	Still Life, Cactus	800,000	1,200,000	1,000,000
21.73	Henri Eugene Augustin Le Sidaner	The Tea Table	800,000	1,200,000	1,000,000
58.360	John Singleton Copley	Jonathan Mountfort	800,000	1,200,000	1,000,000
21.180	Tang Di	Landscape	800,000	1,100,000	950,000
2005.63	Edgar Degas	Seated Nude Woman Brushing Her Hair	800,000	1,000,000	900,000
36.14	Alessandro Magnasco	Satire on a Nobleman in Misery	800,000	1,000,000	900,000
70.188	Diego M. Rivera	Robert Tannahill	1,500,000	200,000	850,000
72.296	Louis Jean Francois Lagrenee	Pygmalion and Galatea	700,000	1,000,000	850,000

70.253	Charles Demuth	Still Life with Apples and Bananas	750,000	900,000	825,000
1997.1	Jean-Léon Gérôme	Seated Woman	700,000	900,000	800,000
21.17	Henri Baptiste Lebasque	On the Balcony	700,000	900,000	800,000
25.63	Unknown	Buddha's Descent from the Trayastrimsas Heaven	700,000	900,000	800,000
47.92	Salvator Rosa	The Finding of Moses	700,000	900,000	800,000
29.172	Unknown	Sakyamuni Emerging from the Mountains	600,000	900,000	750,000
59.295	Johann Gottlieb Kirchner	Joseph Froehlich, Court Jester of Augustus the Strong	700,000	800,000	750,000
48.274	Nathan Bowen	Chest on Chest	650,000	800,000	725,000
26.128	Unknown	Guanyin	600,000	800,000	700,000
29.444	Unknown	Pratyeka Buddha	550,000	850,000	700,000
37.73	Job Adriaensz Berckheyde	Interior of the Grote Kerk, Haarlem	600,000	800,000	700,000
65.145	Edgar Degas	Ballet Dancer Adjusting her Costume	600,000	800,000	700,000
65.174	Max Beckmann	Sacrificial Meal	600,000	800,000	700,000
76.3	Wen Zhengming	The First Prose Poem on the Red Cliff	600,000	800,000	700,000
1992.212	Enzo Cucchi	Quadro Feroce	500,000	800,000	650,000
26.122	Roman	Torso of Apollo, Roman copy	500,000	700,000	600,000
65.223	Pierre Auguste Renoir	Country Lane	500,000	700,000	600,000
1999.59	Paul Gauguin	La Petite Parisienne	500,000	600,000	550,000
40.161	Shen Zhou	Ode to the Pomegranate and Melon Vine	500,000	600,000	550,000



F1983.124	Charles Sheeler	Drive Wheels	500,000	600,000	550,000
09.1S382	Albrecht Dürer	Adam and Eve	450,000	550,000	500,000
2007.145	Charles Rennie Mackintosh	Chair	400,000	600,000	500,000
35.54	Islamic	Folio from the Great Mongol Shahnama: Ardashir Battles Bahman, Son of Ardavan	400,000	600,000	500,000
51.223	James Abbott McNeill Whistler	In the Studio	400,000	600,000	500,000
60.63	Pieter Pietersz Lastman	King David Handing the Letter to Uriah	400,000	600,000	500,000
1994.78.A	Greene and Greene	Blacker Dining Table	300,000	600,000	450,000
50.58	Charles Willson Peale	James Peale	350,000	550,000	450,000
70.187	Diego M. Rivera	Robert H. Tannahill	800,000	100,000	450,000
1985.30	Richard Estes	Welcome to 42nd Street (Victory Theatre)	350,000	450,000	400,000
2006.87	James Abbott McNeill Whistler	Violet and Blue: Among the Rollers	300,000	500,000	400,000
60.1	Auguste Rodin	Aime Jules Dalou	375,000	425,000	400,000
66.131	George Bright	Secretary	350,000	450,000	400,000
69.218	Roman	Statue of the Young Nero Wearing a Toga	350,000	450,000	400,000
71.399	Jean Baptiste Carpeaux	Ugolino and his Children	350,000	400,000	375,000
2003.32	Auguste Rodin	Vase of the Titans	300,000	400,000	350,000
40.48	Egyptian	Head of a Man	300,000	400,000	350,000
45.469	Rembrandt Peale	Self Portrait	300,000	400,000	350,000
67.273	Edgar Degas	Dancer Adjusting Her Slipper	300,000	400,000	350,000

71.196	Martin Carlin	Jewel Coffe	300,000	400,000	350,000
1992.16	Julian Schnabel	Cabalistic Painting	250,000	400,000	325,000
20.42	James Abbott McNeill Whistler	Robert Barr	250,000	350,000	300,000
50.193.A	Asteios Group	Panathenaic Amphora	250,000	350,000	300,000
58.359	John Singleton Copley	Elizabeth Pitts	250,000	350,000	300,000
59.314	George Cochran Lambdin	At the Front	250,000	350,000	300,000
52.27	George Caleb Bingham	The Checker Players	250,000	300,000	275,000
69.302	Edgar Degas	Spanish Dancer	250,000	300,000	275,000
1984.87	Andre-Charles Boulle and his sons	Pedestal Clock	200,000	300,000	250,000
40.47	Egyptian	Head of a Man	200,000	300,000	250,000
53.169	Unknown	Ritual Wine Vessel	200,000	300,000	250,000
1993.122	Richard Estes	Blue Cadillac	200,000	250,000	225,000
37.92	Paul Revere II	Teapot	200,000	250,000	225,000
29.1	Qian Xuan	Early Autumn	150,000	200,000	175,000
56.173	Edgar Degas	Schoolgirl	150,000	200,000	175,000
59.149	Thomas Harland	Tall Case Clock	150,000	200,000	175,000
F74.36	Diego M. Rivera	The Meal	150,000	200,000	175,000
1994.30	Auguste Rodin	Head of Balzac	150,000	180,000	165,000
F82.198	Jean Baptiste Carpeaux	Neapolitan Fisherboy	150,000	175,000	162,500

1983.25.A	Baltimore Painter	South Italian Funerary Vase	125,000	175,000	150,000
45.369	Rembrandt Harmensz van Rijn	Jan Lutma, Goldsmith	125,000	175,000	150,000
65.148	Edgar Degas	Mlle La La at the Circus Fernando	130,000	150,000	140,000
66.391	Hughie Lee-Smith	The Piper	100,000	180,000	140,000
75.86	Jean Baptiste Carpeaux	Le fumeur	125,000	150,000	137,500
77.63	Dong Qichang	Freehand Copy of Zhang Xu's Writing of the Stone Record	120,000	150,000	135,000
2005.1.1	Duncan Phyfe	Pair of Lyre Back Chairs	100,000	150,000	125,000
41.81	Unknown	Parvati	100,000	150,000	125,000
80.39	Korean	Pillow	100,000	150,000	125,000
09.1S949	Rembrandt Harmensz van Rijn	Christ with the Sick around Him, Receiving Little Children	100,000	130,000	115,000
59.297	Unknown	Crozier Head: Saint Michael and the Dragon	113,000	115,000	114,000
25.13	Egyptian	Head from an Anthropoid Sarcophagus	100,000	125,000	112,500
59.185	George Wesley Bellows	A Stag at Sharkey's	100,000	120,000	110,000
70.209	Pierre Auguste Renoir	La blanchisseuse	90,000	120,000	105,000
2001.70	George Cochran Lambdin	Roses on a Wall	80,000	120,000	100,000
53.153	George Caleb Bingham	John Quincy Adams	90,000	110,000	100,000
1984.2	Korean	Full Moon Jar	80,000	100,000	90,000
09.1S937	Rembrandt Harmensz van Rijn	Presentation in the Temple	12,000	160,000	86,000
14.7	Rembrandt Harmensz van Rijn	The Goldweigher's Field	70,000	90,000	80,000

09.1S922	Rembrandt Harmensz van Rijn	Self Portrait with Saskia	50,000	100,000	75,000
1993.19	Leonaert Bramer	The Adoration of the Magi	60,000	80,000	70,000
38.33	Rembrandt Harmensz van Rijn	Descent from the Cross by Torchlight	45,000	85,000	65,000
1988.1	Korean	Head of Buddha	50,000	70,000	60,000
65.140	Paul Cezanne	Slave	50,000	70,000	60,000
09.1S928	Rembrandt Harmensz van Rijn	Abraham and Isaac	40,000	70,000	55,000
09.1S968	Rembrandt Harmensz van Rijn	Landscape with a Square Tower	50,000	60,000	55,000
1990.295	Louis Comfort Tiffany	Jack-in-the-Pulpit Vase	50,000	55,000	52,500
09.1S945	Rembrandt Harmensz van Rijn	Christ and the Woman of Samaria	40,000	60,000	50,000
09.1S972	Rembrandt Harmensz van Rijn	Old Man Shading His Eyes with His Hand	40,000	60,000	50,000
68.22	Rembrandt Harmensz van Rijn	Old Man Shading His Eyes with His Hand	40,000	60,000	50,000
F77.104	Thomas Cowperthwaite Eakins	Three Female Nudes	40,000	60,000	50,000
09.1S959	Rembrandt Harmensz van Rijn	Death of the Virgin	35,000	55,000	45,000
09.1S963	Rembrandt Harmensz van Rijn	Medea: Or the Marriage of Jason and Creusa	30,000	50,000	40,000
09.1S963.A	Rembrandt Harmensz van Rijn	Medea: Or the Marriage of Jason and Creusa	30,000	50,000	40,000
09.1S986	Rembrandt Harmensz van Rijn	Three Heads of Women	35,000	45,000	40,000
1994.97.A	Islamic	Qur'an Folio	20,000	60,000	40,000
2006.109	Gandhara	Bodhisattva Padmapani	30,000	50,000	40,000
31.70	Egyptian	Seated Scribe	35,000	45,000	40,000

2003.26.1	Lorna Simpson	Bathroom	30,000	40,000	35,000
70.210	Auguste Rodin	Baudelaire	30,000	40,000	35,000
09.1S934	Rembrandt Harmensz van Rijn	Adoration of the Shepherds	25,000	40,000	32,500
09.1S975	Rembrandt Harmensz van Rijn	Man in an Arbour	30,000	35,000	32,500
09.1S923	Rembrandt Harmensz van Rijn	Self Portrait in a Velvet Cap with Plume	20,000	40,000	30,000
09.1S981	Rembrandt Harmensz van Rijn	Bearded Man in a Velvet Cap with a Jewel Clasp	20,000	40,000	30,000
27.586.1	Nepalese	Manuscript of the "Perfection of Transcendent Wisdom in Eight Thousand Verses" Text	20,000	40,000	30,000
35.40	Paul Revere II	Sugar Basket	25,000	35,000	30,000
35.41	Paul Revere II	Creamer	25,000	35,000	30,000
46.174	Rembrandt Harmensz van Rijn	Self Portrait in a Velvet Cap with Plume	20,000	40,000	30,000
2001.1	Rembrandt Harmensz van Rijn	The Angel Appearing to the Shepherds	24,000	34,000	29,000
09.1S974	Rembrandt Harmensz van Rijn	Old Man with a Divided Fur Cap	24,000	32,000	28,000
09.1S979	Rembrandt Harmensz van Rijn	Jan Asselyn	25,000	30,000	27,500
09.1S933	Rembrandt Harmensz van Rijn	Angel Appearing to the Shepherds	22,000	30,000	26,000
09.1S1044	Peter Paul Rubens	Saint Catherine of Alexandria	20,000	30,000	25,000
09.1S926	Rembrandt Harmensz van Rijn	Abraham Casting Out Hagar and Ishmael	20,000	30,000	25,000
09.1S943	Rembrandt Harmensz van Rijn	Christ Driving the Money Changers from the Temple	23,000	27,000	25,000
09.1S944	Rembrandt Harmensz van Rijn	Christ Driving the Money Changers from the Temple	23,000	27,000	25,000
2001.9	Lorna Simpson	Coiffure	20,000	30,000	25,000

35.103	Coptic	Female Portrait with Halo	20,000	30,000	25,000
45.370	Rembrandt Harmensz van Rijn	Golf Player	18,000	30,000	24,000
09.1S982	Rembrandt Harmensz van Rijn	Bust of a Man Wearing a High Cap, Three-Quarters Right: The Artist's Father (?)	20,000	25,000	22,500
1989.76.A	Henry Kirke Brown	Filatrice	20,000	25,000	22,500
09.1S921	Rembrandt Harmensz van Rijn	Self Portrait in a Cap and Scarf with the Face Dark: Bust	15,000	28,000	21,500
09.1S929	Rembrandt Harmensz van Rijn	Joseph Telling His Dreams	16,000	24,000	20,000
68.20	Rembrandt Harmensz van Rijn	Old Man Shading His Eyes with His Hand	15,000	25,000	20,000
2004.52	James Abbott McNeill Whistler	The Kitchen	18,000	20,000	19,000
79.28.1	Suzuki Kiitsu	Reeds and Cranes	18,000	20,000	19,000
09.1S955	Rembrandt Harmensz van Rijn	Return of the Prodigal Son	15,000	22,000	18,500
09.1S936	Rembrandt Harmensz van Rijn	Presentation in the Temple	15,000	21,000	18,000
1988.62	Choi Sokhwan	Grapevine	15,000	20,000	17,500
09.1S941	Rembrandt Harmensz van Rijn	Tribute Money	13,000	20,000	16,500
45.368	Rembrandt Harmensz van Rijn	Triumph of Mordecai	12,000	20,000	16,000
52.243	Rembrandt Harmensz van Rijn	Christ Crucified between the Two Thieves	11,000	21,000	16,000
09.1S946	Rembrandt Harmensz van Rijn	Christ and the Woman of Samaria Among Ruins	14,000	17,000	15,500
09.1S953	Rembrandt Harmensz van Rijn	Christ Carried to the Tomb	14,000	16,000	15,000
09.1S984	Rembrandt Harmensz van Rijn	The Artist's Mother Seated, in an Oriental Headdress Half Length	12,000	18,000	15,000
1983.3	Unknown	Noh Theater Robe, Surihaku Type	10,000	20,000	15,000

52.242	Rembrandt Harmensz van Rijn	Flight into Egypt	14,000	16,000	15,000
09.1S973	Rembrandt Harmensz van Rijn	Old Man with Beard, Fur Cap, and Velvet Cloak	13,000	16,000	14,500
09.1S935	Rembrandt Harmensz van Rijn	The Circumcision	12,500	16,000	14,250
09.1S940	Rembrandt Harmensz van Rijn	Christ Disputing with the Doctors	11,000	15,000	13,000
09.1S947	Rembrandt Harmensz van Rijn	Raising of Lazarus	11,000	13,000	12,000
09.1S939	Rembrandt Harmensz van Rijn	Virgin and Child in the Clouds	8,000	15,000	11,500
09.1S980	Rembrandt Harmensz van Rijn	Old Bearded Man in a High Fur Cap	10,000	13,000	11,500
1988.10.13	Egyptian	The Book of the Dead of Nes-Min, Section 13	10,000	12,500	11,250
09.1S961	Rembrandt Harmensz van Rijn	Saint Jerome Praying: Arched	10,000	12,000	11,000
09.1S985	Rembrandt Harmensz van Rijn	Studies of the Head of Saskia and Others	8,000	12,000	10,000
59.79	Rembrandt Harmensz van Rijn	A Peasant in a High Cap, Standing Leaning on a Stick	9,000	11,000	10,000
46.173	Rembrandt Harmensz van Rijn	The Rest on the Flight: A Night Piece	6,000	8,000	7,000
59.289	Louis Comfort Tiffany	Flower-form Vase	6,000	8,000	7,000
64.295	John Sloan	Night Windows	6,000	7,500	6,750
09.1S956	Rembrandt Harmensz van Rijn	Beheading of John the Baptist	6,000	7,000	6,500
2002.135	Carrie Mae Weems	Not Manet's Type	5,000	7,500	6,250
F81.57	Robert Adamson	Elizabeth Rigby (later Lady Eastlake)	5,000	7,500	6,250
09.1S958	Rembrandt Harmensz van Rijn	Stoning of Saint Stephen	4,000	6,000	5,000
09.1S965	Rembrandt Harmensz van Rijn	Baptism of the Eunuch	3,500	6,500	5,000

09.1S964	Rembrandt Harmensz van Rijn	Bathers	3,000	5,000	4,000
09.1S977	Rembrandt Harmensz van Rijn	Samuel Manasseh Ben Israel	2,500	5,000	3,750
09.1S977.50	Rembrandt Harmensz van Rijn	Samuel Manasseh Ben Israel	2,500	5,000	3,750
64.285	John Sloan	Connoisseurs of Prints	3,500	4,000	3,750
64.279	John Sloan	The Woman's Page	3,200	3,800	3,500
64.304	John Sloan	Prone Nude	2,000	3,000	2,500
F74.21	Islamic	Jewel Box inscribed "Amir Bukhara"	1,000	4,000	2,500
1983.21	Maruyama Okyo	Entertainments of the Four Seasons in Kyoto	2,000	2,500	2,250



**Attachment J**

**Step 2 Attachment**

<b>DIA Accession No.</b>	<b>Artist</b>	<b>Title</b>	<b>Third Party Average Values</b>
40.19	Donatello	Madonna and Child	5,750,000
70.186	Amedeo Modigliani	A Man	5,750,000
1994.57	Pierre Auguste Renoir	The Spanish Guitarist	5,000,000
34.188	Frans Jansz Post	View of the Jesuit Church at Olinda, Brazil	5,000,000
56.32	Fra Angelico	Madonna and Child with Angels	5,000,000
2005.62	Henri Matisse	Anemones and Peach Blossoms	4,750,000
65.108	Henry Moore	Reclining Figure	4,375,000
1988.18	Joan Mitchell	Before, Again II	4,000,000
46.56	Sassetta	The Betrayal of Christ	4,000,000
61.397	Lucas Cranach the Elder	Saint Christopher	4,000,000
22.3	Michel Erhart	Virgin and Child	3,750,000
43.38	Canaletto	The Piazza San Marco	3,500,000
53.270	Sassetta	The Agony in the Garden	3,500,000
69.305	Lyonel Feininger	Sailboats	3,500,000
23.31	Lucas Cranach the Elder	Madonna and Child with Infant Saint John the Baptist and Angels	3,350,000
26.94	Correggio	The Mystic Marriage of Saint Catherine	3,250,000
47.58	Peter Paul Rubens	Archduke Ferdinand, Cardinal-Infante of Spain, at the Battle of Nordlingen	3,250,000
63.156	Stuart Davis	Standard Brand	3,250,000

89.11	Giovanni Battista Cima	Madonna and Child	3,250,000
29.264	Diego Rodriguez de Silva Velazquez	A Man	3,125,000
47.81	Winslow Homer	The Dinner Horn	3,100,000
40.56	Winslow Homer	Girl and Laurel	3,000,000
59.11	Lyonel Feininger	Fisher off the Coast	3,000,000
74.2	Gaetano Gandolfi	Venus Receiving the Arms from Vulcan for Aeneas	3,000,000
77.1.2	Fra Angelico	Virgin Annunciate	3,000,000
74.122	Yves Tanguy	Shadow Country	2,950,000
64.459	Peter Paul Rubens	Saint Ives of Treguier, Patron of Lawyers, Defender of Widows and Orphans	2,750,000
70.150	Winslow Homer	The Four-Leaf Clover	2,750,000
51.66	Winslow Homer	Defiance: Inviting a Shot Before Petersburg	2,700,000
24.95	Benvenuto di Giovanni di Meo del Guasta	Virgin and Child with Angels	2,500,000
25.35	Carlo Crivelli	The Deposition of Christ	2,500,000
40.50	Michel Sittow	Catherine of Aragon as the Magdalene	2,500,000
59.444	Sodoma	The Holy Family and St. John	2,500,000
70.185	Amedeo Modigliani	Young Man with a Cap	2,500,000
72.436	Tony Smith	Gracehoper	2,500,000
73.1	Charles Le Brun	The Presentation of Christ in the Temple	2,500,000
45.454	Georgia O'Keeffe	Stables	2,375,000

F76.92	Donatello	The Nativity (Ford Nativity)	2,362,500
59.18	Thomas Germain	Tureen with Lid, Liner, and Stand	2,350,000
42.127	Claude Gellée	A Seaport at Sunset	2,300,000
26.107	Titian	The Appeal	2,250,000
41.10	Claude Gellée	Sunrise	2,250,000
44.271	Heinrich Campendonk	In the Forest	2,250,000
65.347	Niccolo dell' Abbate	Eros and Psyche	2,250,000
66.15	Giovanni di Paolo	Saint Catherine of Siena Dictating Her Dialogues	2,250,000
70.173	Edouard Manet	On the Beach	2,200,000
31.27	William Merritt Chase	My Little Daughter Dorothy	2,125,000
51.13	Bernardo Strozzi	Street Musicians	2,062,500
49.337	Antoine Jean Gros	Murat Defeating the Turkish Army at Aboukir	2,000,000
57.182	Otto Mueller	Gypsy Encampment	2,000,000
54.118	Charles Demuth	Buildings Abstraction, Lancaster	1,875,000
35.110	Oskar Kokoschka	View of Jerusalem	1,850,000
25.2	Egyptian	Head of a Woman	1,800,000
38.56	Giovanni Battista Piazzetta	Madonna and Child with an Adoring Figure	1,750,000
55.183.A	Thomas Germain	Tureen with Lid and Stand	1,750,000
61.28	Albert Bierstadt	The Wolf River, Kansas	1,750,000

78.38	Jasper Francis Cropsey	Indian Summer	1,750,000
08.9	Thomas Wilmer Dewing	The Recitation	1,700,000
27.316	Thomas Wilmer Dewing	Summer	1,700,000
73.3	Henry Clifton and Thomas Carteret, Philadelphia	High Chest of Drawers	1,700,000
49.23	Jean Antoine Houdon	Robert Fulton	1,625,000
50.20	Max Beckmann	Still Life with Lilies	1,600,000
77.12	Andrew Wyeth	Sea Boots	1,600,000
53.359	Francesco Guardi	View of Dolo on the Brenta	1,575,000
76.79	Kongo	Nail Figure	1,575,000
53.468	Domenico Ghirlandaio	Young Man	1,550,000
25.65	Jan de Cock	Lot and His Daughters	1,500,000
26.110	Andrea Solario	Saint George and Saint Sebastian	1,500,000
29.316	Giovanni del Biondo	Virgin Annunciate	1,500,000
29.322	Max Beckmann	Still Life with Fallen Candles	1,500,000
47.398	John Zoffany	Scene from "Love in a Village"	1,500,000
63.135	Karl Schmidt-Rottluff	Evening by the Sea	1,450,000
63.133	Oskar Kokoschka	Girl with Doll	1,425,000
25.6	George Benjamin Luks	Three Top Sergeants	1,400,000
58.385	Paula Modersohn-Becker	Old Peasant Woman	1,400,000

2010.106	Philip Guston	Driver	1,375,000
53.193	Lorenz Helmschmied	Armor in the Gothic Style	1,375,000
1999.119.A	Raoul Dufy	The Allegory of Electricity	1,350,000
66.68	Frank Stella	Union I	1,350,000
66.17	Johann Joachim Kaendler	Crane (Grus Grus)	1,325,000
2006.153	Raymond Duchamp-Villon	Le Cheval Majeur (The Large Horse)	1,250,000
24.96	Master of Città di Castello	Madonna and Child	1,250,000
89.30	Gerrit Adriaensz. Berckheyde	View of the Grote Kerk in Haarlem	1,250,000
16.31	Frank Weston Benson	My Daughter Elisabeth	1,200,000
25.20	Antonio Susini	Lion Attacking Horse	1,200,000
59.450	Ernst Ludwig Kirchner	Café	1,200,000
79.143	Childe Hassam	Notre Dame Cathedral, Paris, 1888	1,200,000
24.30	Maurice Brazil Prendergast	Landscape with Figures	1,175,000
2011.18	Sanford Robinson Gifford	On the Nile	1,150,000
29.321	Edvard Munch	Boy in Blue	1,150,000
29.315	Giovanni del Biondo	Angel Annunciate	1,125,000
79.30	Bartolomeo Manfredi	The Fortune Teller	1,125,000
62.97	Henry Moore	Reclining Figure	1,100,000
64.264	Jean Arp	Torso of a Giant	1,075,000

25.205	Domenico Ghirlandaio	Saint Michael and the Angels at War with the Devil	1,050,000
26.17	Boris Grigoriev	Russian Peasant Girl	1,050,000
70.229	Constantin Brancusi	Sleeping Child	1,050,000
1991.1015	Paul Klee	Translucencies, Orange-Blue	1,025,000
81.695	Giovanni Battista Foggini	Cupid and Psyche	1,025,000
77.72	Jean Francois de Troy	Luncheon with Figures in Masquerade Dress	1,020,000
89.39	Pieter de Hooch	Mother Nursing Her Child	1,000,000
25.183	Kongo	Knife Case and Lid	950,000
73.167	Pietro Piffetti	Secretary	950,000
01.2	John Mix Stanley	Indian Telegraph	900,000
59.443	Pierre Bonnard	Woman with Dog	875,000
63.134	Karl Schmidt-Rottluff	Man with a Green Beard	875,000
75.31	Camille Pissarro	The Kitchen at Piette's, Montfoucault	850,000
89.23	Guido Reni	Head of Christ Crowned with Thorns	850,000
37.2	Karl Schmidt-Rottluff	Rain Clouds, Lago di Garda	825,000
82.27	Giovanni Franceso Susini	Bacchus and a Young Satyr	825,000
19.34	Frederick Carl Frieseke	The Blue Gown	800,000
1990.10	Gioacchino Assereto	St. Francis of Assisi in Ecstasy before a Cherub with a Violin	800,000
22.203	Ferdinand Hodler	A Woman	800,000

49.417	Danese Cattaneo	Neptune: Allegory of Winter and Water	775,000
49.418	Danese Cattaneo	Mars: Allegory of Summer and Fire	775,000
53.177	Etienne Pollet	Toilet Service of the Duchesse de Cadaval	775,000
76.95	Robert Smithson	Non Site - Site Uncertain	775,000
21.205	Erich Heckel	Woman	750,000
26.113	Cristoforo Caselli	Saint Matthew and Saint Sebastian	750,000
44.90	Paul Klee	Reclining	750,000
46.135	Martin Johnson Heade	Sunset	750,000
56.85.2	Thomas Germain	Candelabrum	750,000
71.7	Claes Oldenburg	Giant Three-Way Plug	750,000
75.18	Claes Oldenburg	Alphabet / Good Humor - Cloth Study	750,000
77.14	Claes Oldenburg	Alphabet / Good Humor	750,000
36.10	Il Pensionante del Saraceni	The Fruit Vendor	725,000
15.12	Willard Leroy Metcalf	The White Veil	700,000
1983.24	Fang	Mask	700,000
37.11	Frederic Sackrider Remington	The Mountain Man	700,000
26.43	Willem Kalf	Still Life with Columbine Goblet	675,000
37.1	Emanuel de Witte	Interior of the Oude Kerk in Amsterdam	675,000
56.31	Thomas Cole	American Lake Scene	675,000



F76.14	Albrecht Dürer	Adam and Eve	650,000
64.218	Karl Hofer	Wind	625,000
74.123	Chaim Soutine	Red Gladioli	625,000
1992.290	Benin	Horse and Rider	615,000
55.519	Unknown	Pride	600,000
19.150	Robert Cozad Henri	Boy with Plaid Scarf	550,000
1995.26	Martin Johnson Heade	Seascape: Sunset	550,000
26.28	Maurice de Vlaminck	Marine	550,000
52.246	Augustus Saint-Gaudens	Abraham Lincoln	550,000
77.29	Fang	Head	550,000
34.191	Bacchiacca (Francesco Ubertini Verdi)	Saint John the Baptist in the Wilderness	545,000
56.85.1	Thomas Germain	Candelabrum	525,000
75.59	Felix Vallotton	Standing Nude Holding Gown on Her Knee	525,000
26.112	Cristoforo Caselli	Saint Paul and Saint James the Elder	500,000
28.123	Master of the Games	A Peasant Family	500,000
30.322	William James Glackens	The Promenade	500,000
46.359	Rogier van der Weyden	Saint Jerome in the Desert	500,000
57.88	Unknown	Yogini	500,000
1988.9	Jean-Frederic Bazille	Still Life with Fish	475,000

79.21	Pierre Puget	Le ravissement d'Helene	475,000
53.197	Unknown	Armor for the Tilt in the Saxon Fashion	462,500
14.5	Jonas Lie	Culebra Cut	450,000
19.36	Elie Nadelman	Resting Stag	450,000
19.43	Paul Manship	Dancer and Gazelles	450,000
1987.75	Louis Francois Roubiliac	Bust of Isaac Ware	450,000
1992.8	Henri Gervex	Cafe Scene in Paris	450,000
21.181	Unknown	Landscape	450,000
29.425	Unknown	Ceremonial Wine Vessel	450,000
58.383	Michel Sittow	A Young Man in a Red Cap	450,000
72.201	Rembrandt Harmensz van Rijn	Man Wearing a Plumed Beret and Gorget	450,000
79.22	Bamileke	Maternity Figure	450,000
41.124	Donatello	Coat of Arms of the Boni Family	437,500
76.159	Lovis Corinth	Still Life with Lilacs	437,500
2005.72	Thomas Wilmer Dewing	Commerce and Agriculture Bringing Wealth to Detroit	425,000
22.8	Andrea Previtali	Madonna and Child in Landscape	425,000
22.9	Antonio Rimpatta	Madonna and Child with the Infant Saint John the Baptist	425,000
24.113	Greek	Draped Female Figure	425,000
27.160	Augustus Edwin John	The Mumpers	425,000

50.31	John Haberle	Grandma's Hearthstone	425,000
82.49	Bena Lulua	Figure	425,000
19.66	James Earle Fraser	The End of the Trail	400,000
25.201	Odilon Redon	Evocation of Butterflies	400,000
25.41	Maso di Banco	Virgin Enthroned with Saints, Nativity and Crucifixion	400,000
26.370	Sawos	Ceremonial Shield	400,000
29.331	Georg Kolbe	Assunta	400,000
38.80	Bernardino dei Conti	Gentleman of the Trivulzio Family	400,000
69.361	Ellsworth Kelly	Black White	400,000
82.3	Paul Manship	The Moods of Time: Evening	400,000
20.100	Henry Raeburn	Henry David Erskine, Twelfth Earl of Buchan	375,000
2001.36	Severin Roesen	Flowers	375,000
36.30	Paolo Veronese	The Muse of Painting	375,000
37.74	Unknown	Vase	375,000
10.6	Willard Leroy Metcalf	Unfolding Buds	350,000
19.19	Childe Hassam	Surf and Rocks	350,000
19.37	Elie Nadelman	Wounded Stag	350,000
1990.245	Doccia Porcelain Factory	Apollo in his Chariot	350,000
1996.32	Joseph Chinard	Perseus Rescuing Andromeda	350,000

25.206	Unknown	Young Man	350,000
44.165	Washington Allston	The Flight of Florimell	350,000
45.455	Charles Sheeler	Home Sweet Home	350,000
53.470	Oskar Kokoschka	The Cat	350,000
70.680	Theodore Robinson	Scene at Giverny	350,000
29.355	Luca della Robbia	Madonna and Child	340,000
1994.88	Thomas Worthington Whittredge	The Baptism	325,000
1998.58	Ercole Ferrata	Portrait Bust of Ottaviano Acciaiuoli	325,000
39.6	Asher Brown Durand	Monument Mountain, Berkshires	325,000
43.418	Jacob Jordaens	Job	325,000
72.839	Thomas Wilmer Dewing	Classical Figures	325,000
73.254	Antonio Montauti	The Return of the Prodigal Son	325,000
46.260	Etruscan	Bronze Statuette of a Rider	317,500
27.158	Arthur Bowen Davies	Dances	312,500
53.196	Unknown	Armor for the Tilt	312,500
1983.13	Franz Ignaz Günther	Christ at the Column	300,000
1998.1	Richard Wilson	Caernarvon Castle	300,000
21.102	Charles Rennie Mackintosh	Petunias	300,000
26.22	Jan Baptist Weenix	Still Life with a Dead Swan	300,000

28.95	Nicolas Lancret	The Repast of the Hunting Party	300,000
29.320	Andrea di Bartolo	Christ in Benediction	300,000
55.175	Richard Caton Woodville	The Card Players	300,000
21.70	William McGregor Paxton	Woman Sewing	290,000
47.122	George Benjamin Luks	Woman with Macaws	287,500
26.126	Byzantine	Casket	275,000
26.180	Benin	Royal Portrait	275,000
29.324	Giorgio de Chirico	Horses	275,000
29.357.A	Carl Milles	Europa and the Bull	275,000
51.9	Ojibwa	Bowl in the Form of a Beaver	275,000
53.200	Unknown	Corsaletto	262,500
08.7	John Henry Twachtman	The Pool	250,000
1999.1	Martin Puryear	Untitled, 1997	250,000
25.22	Albert Pinkham Ryder	Summer Night, Moonlight	250,000
30.370	Rembrandt Harmensz van Rijn	Christ	250,000
50.19	Albert Pinkham Ryder	The Tempest	250,000
81.698	Easter Island	Gorget	250,000
F80.215	Robert S. Duncanson	Ellen's Isle, Loch Katrine	250,000
23.100	George Inness	Apple Orchard	240,000

51.331	George Inness	The Lonely Pine	240,000
26.106	Unknown	Adoration of the Magi, St. Severus and St. Walburga, St. James and St. Philip	225,000
26.124	Francesco da Valdambriano	Corpus of Christ	225,000
29.348	Francesco Fanelli	Don Gaspar de Guzman, Duke of San Lucar, known as the Count-Duke of Olivares (1587-1645)	225,000
30.371	Egyptian	Relief of Peasants Driving Cattle and Fishing	225,000
82.26	John White Alexander	Panel for Music Room	225,000
15.2	Paul Manship	Centaur and Dryad	210,000
25.145	Domenico di Michelino	The Trinity	210,000
28.147	Unknown	Reliquary	210,000
10.21	Birge Harrison	Fifth Avenue at Twilight	200,000
1997.80	Olówè of Isè	Palace Door	200,000
27.382	Philippe Magnier	Nymph and Eros	200,000
27.383	Antoine Coysevox	Le Fleuve la Garonne	200,000
28.150	Unknown	Attendant Deity	200,000
28.99	Marie Laurencin	Mother and Child	200,000
49.498	Robert S. Duncanson	Uncle Tom and Little Eva	200,000
55.520	Unknown	Charity	200,000
55.521	Unknown	Fortitude	200,000
55.522	Unknown	Wrath	200,000

89.44	Rembrandt Harmensz van Rijn	The Death of Lucretia (?)	200,000
22.10	Francesco dai Libri	Madonna and Child	190,000
27.211	Roman	Head of a Man	190,000
53.198	Unknown	Half-Armor	187,500
21.182	Unknown	Virgin and Child Enthroned	185,000
21.197	Unknown	Altar Cross	185,000
22.30	Unknown	Virgin and Child with Donor	185,000
1992.42	Bartolomeo Bellano	Head of a Youth or Angel	175,000
21.213	Georg Kolbe	Resurrection	175,000
65.162	Henri Matisse	Plumed Hat	175,000
70.323	Emil Nolde	Portrait of the Artist and His Wife	175,000
59.124.A	Fontana Workshop	Childbirth Set	172,500
43.486	William Merritt Chase	Portrait of a Lady in Black	162,500
67.254	William Merritt Chase	Mrs. William Merritt Chase	162,500
70.831	Benjamin West	Lot Fleeing from Sodom	162,500
20.113	Eugene Louis Boudin	View of Antibes	160,000
21.209	Erich Heckel	Sunflowers	160,000
29.327	James Ensor	Le Ballet Féerique (Le Jardin D'Amour)	160,000
31.55	Islamic	Ewer	160,000

2004.14	Hale Woodruff	The Art of the Negro: Artists (Study)	150,000
25.147	Tino di Camaino	Madonna and Child	150,000
26.108	Guercino (Giovanni Francesco Barbieri)	Christ and the Woman of Samaria	150,000
27.380	Donatello	Saint George	150,000
27.381	Michelangelo	Dying Slave	150,000
28.144	John Crome	View near Weymouth	150,000
35.119	Thomas Doughty	In Nature's Wonderland	150,000
38.25	Turone da Verona	Crucifixion	150,000
69.452	Henry Ossawa Tanner	Flight into Egypt	150,000
70.328	Karl Schmidt-Rottluff	Water Lilies	150,000
81.644	Meskwaki	Bear Claw Necklace	150,000
24.73	Aristide Maillol	Crouching Female	140,000
25.184	Niccolo Tribolo	Putto and Two Geese	140,000
28.83	Unknown	Vase	140,000
24.98	Egyptian	Relief of Mourners and Funeral Meats	137,500
42.59	Asher Brown Durand	View of Rutland, Vermont	137,500
28.181	Renee Sintenis	Donkey	135,000
28.94	Jan Fyt	Dead Game and Weasels	135,000
25.18	Unknown	Angel Holding Candlestick	130,000



51.54	Girolamo Campagna	Athena Armed	130,000
16.13	Solon Hannibal Borglum	Lassoing Wild Horses	125,000
1983.7	Eskimo	Winged Object	125,000
26.7	Riza-i 'Abbasi	Pair of Doors	125,000
29.313	Islamic	Double-niche rug	125,000
29.41	Luca Signorelli	The Resurrected Christ Appearing to St. Magdalene	125,000
29.42	Luca Signorelli	The Resurrected Christ Appearing to His Disciples	125,000
44.219	School of Florence	The Agony in the Garden	125,000
44.220	School of Florence	Pilate Washing his Hands	125,000
47.397.A	Dick Price	Sisiutl	125,000
59.312	John Mix Stanley	Mountain Landscape with Indians	125,000
80.25	Unknown	Tray with Design of Cranes and Chrysanthemums	125,000
22.12	Andrea di Bartolo	Madonna and Child	120,000
26.111	Antoniazio Romano	Christ Enthroned, the Virgin, Saint Francesca Romana, an Angel and Donor	120,000
1994.77	Unknown	Pietre dure Cabinet	115,000
22.254.1	Unknown	Console	115,000
24.104	Roman	Head of Bearded Man	115,000
24.13	Tyskiewicz Painter	Jar depicting Aphrodite, Hera and Hermes	115,000
27.208	Roman	Sarcophagus with Winged Victories Holding Plaque	115,000

48.137	Islamic	Summer Floor Covering (nihale)	115,000
16.16	William Merritt Chase	Self Portrait	112,500
24.110	Bonino da Campione	Madonna and Child	110,000
27.273	Islamic	'Dragon' Rug	110,000
26.138	Unknown	Sarcophagus	105,000
29.443	Unknown	Buddha Triad with Mandorla	105,000
13.8	Robert Reid	The Miniature	100,000
2001.74	Islamic	Section of a Tile Panel	100,000
25.151	Agostino di Giovanni	Madonna and Child with Angels	100,000
26.181	Islamic	Bowl	100,000
27.541	Unknown	Scene from "The Tale of Genji": from the chapter "The Maiden"	100,000
29.297	Islamic	Inkwell	100,000
30.283	Paul Klee	Woman Reading	100,000
34.153	Tintoretto	Study after Michelangelo's Saint Damian	100,000
53.273	Irish	Lunula	100,000
27.314	Dwight William Tryon	Autumn	95,000
27.315	Dwight William Tryon	Spring	95,000
30.421	Islamic	Bowl Inscribed "Wealth"	90,000
1997.72.A	Louis Comfort Tiffany	Tall Case Clock	85,000

22.15	Raoul Dufy	Still Life	85,000
24.105	Cypriot	Head of a Bearded Man	85,000
25.43	Mariotto di Nardo	Madonna and Child	85,000
27.546	Anonymous	Seated Nyoirin Kwannon	85,000
29.333	Unknown	Saint John the Evangelist	85,000
30.291	Max Kaus	Man in a Fur Coat	85,000
30.432.A	Islamic	Salt Cellar inscribed with Poem about Salt	85,000
28.186	Edward Hopper	The Locomotive	82,500
21.23	Bessie Potter Vonnoh	Allegresse	80,000
26.144	Unknown	Transenna	80,000
26.145	Unknown	Transenna	80,000
27.1	Unknown	Tomb Effigy of a Recumbent Knight	80,000
29.430	Edward Hopper	Night in the Park	80,000
76.144	Cheyenne	Shield	80,000
2002.216	Claes Oldenburg	Inverted Q	75,000
22.11	Antoniazio Romano	Madonna and Child	75,000
25.114	George Wesley Bellows	A Knockout, Second State	75,000
25.5	Islamic	Bottle	75,000
26.79	Dante Gabriel Rossetti	A fight for a Woman	75,000

29.233.A	Egyptian	Portion of a Carpet	75,000
29.356	Carl Milles	Folke Filbyter	75,000
57.84	Robert S. Duncanson	Fruit Piece	75,000
70.651	Claes Oldenburg	Profile Airflow	75,000
77.49	Maya	Embracing Couple	75,000
79.179	Western Apache	Olla	75,000
82.33.A	Korean	Stationery Box with Design of Lotus Blossoms and Scrolls	75,000
85.3	Rembrandt Peale	The Court of Death	75,000
24.120	Leningrad Painter	Mixing Vessel	70,000
26.142	Unknown	Christ and the Symbols of the Four Evangelists	70,000
26.179	Unknown	Transenna	70,000
28.81.1	Jean Hauré	Sconce	70,000
77.78	Nazca Huari	Ceremonial Textile	70,000
24.108.A	St. Romauld and Camaldose Monks	Choral Leaf Fragment: Historiated "A" with Six Monks Presenting a Book to an Enthroned Saint (?)	67,500
1999.58	William T. Williams	The Flute Player	65,000
2000.44	Howardena Pindell	Autobiography: Air/CS560	65,000
24.127	Swing Painter	Storage Jar	65,000
28.112	Max Kaus	Young Woman Sewing	65,000
28.67	Unknown	Four Heads of Buddhist Divinities	65,000

30.285	Oscar Ghiglia	The Artificial Rose	65,000
38.9	Jacques de Gheyn II	Studies of the Heads of Two Youths and an Old Woman	65,000
45.130	Roman	Oscillum with Satyr and Maenad	65,000
47.82	Robert Crosman	Taunton Chest	65,000
21.79	Wilhelm Pleydenwurff	The Nuremberg Chronicle	60,000
27.547	Anonymous	Seated Kwannon with Two Attendants	60,000
28.100	Maurice Utrillo	The Country House	60,000
70.953	Mather Brown	Sir George Augustus Elliott, Baron Heathfield	60,000
25.36	Islamic	Tile	57,500
28.88	François-Joseph Duret	Flora	57,500
26.90	Thomas Sully	Mrs. Edward Hudson	55,000
27.281	Micali Painter	Storage Jar	55,000
28.96	Andre Derain	Bay of Ciotat	55,000
28.97	Andre Derain	Young Girl	55,000
29.347	Wilhelm Lehbruck	Standing Female Figure	55,000
30.372	Egyptian	A Middle Kingdom Dignitary	55,000
26.20	Augustin Hirschvogel	Landscape with the Conversion of Saulus	52,500
30.373	Egyptian	Scarab	52,500
1986.25	Huari	Tunic	50,000

2002.126	Robert Colescott	Change Your Luck	50,000
21.135	Jean Duvet	The Martyrdom of Saint John the Evangelist	50,000
21.192	Unknown	The Dream of Daniel	50,000
24.72	Aristide Maillol	Standing Female	50,000
26.369	Papuan Gulf	Ceremonial Shield	50,000
27.542	Anonymous	Seishi, the Wisdom of Amida, Seated on Lotus Pedestal	50,000
27.545	Anonymous	Amida, Jizo, Seishi, Kwannon and Raikabutsu	50,000
30.359	Rembrandt Harmensz van Rijn	Abraham's Sacrifice	50,000
30.362	Rembrandt Harmensz van Rijn	Abraham Entertaining the Angels	50,000
47.180	Vera Cruz	Palma with Maize God Receiving a Human Sacrifice	50,000
51.10	Ojibwa	Scoop or Spoon	50,000
52.207	Robert S. Duncanson	William Berthelet	50,000
78.87	Hale Woodruff	Ancestral Memory	50,000
F1983.73	Bob Thompson	The Death of Camilla	50,000
1994.19	Donald Sultan	Oranges on a Branch March 14, 1992	45,000
21.189	School of Burgundy	Saint Paul	45,000
22.213	A Stone Buddhist stele	Buddha with Attendants	45,000
22.277	Unknown	Pieta	45,000
26.139	Roman	Strigilated Sarcophagus with Figures of Salus & Asclepius	45,000

26.161	Unknown	Amida Buddha	45,000
26.35	Auguste Herbin	Still Life	42,500
29.301.A	The Annunciation	Antiphony Leaf: Historiated "M" with Annunciation	42,500
29.302.A	The Assumption	Antiphony Leaf: Historiated "V" with Assumption	42,500
40.49	Egyptian	Cinerary Urn	42,500
45.120	Roman	Bull Statuette	42,500
82.29	Mangbetu	Harp	40,770
1983.31.1	Sam Gilliam	The Arc Maker I & II	40,000
1985.18	Judy Pfaff	The Italians	40,000
22.205	Niklaus Weckmann	Virgin and Child	40,000
24.14	Group E, Greek	Neck Amphora	40,000
25.176	Byzantine	Calendar of the Twelve Great Feasts of the Orthodox Church	40,000
26.10	Benin (i)	Warrior	40,000
26.109	Jan van Coninxloo	The Crucifixion	40,000
26.11	Benin (II)	Warrior	40,000
26.116	Mariano Andreu	Spanish Dancer	40,000
26.117	Mariano Andreu	The Bathers	40,000
26.32	Paul Signac	Port Louis	40,000
26.33	Paul Signac	The Seine	40,000

28.103	Gino Severini	Still Life	40,000
29.312	William Cripps	Epergne	40,000
29.330	Aristide Maillol	Venus	40,000
60.66	Jean-Léon Gérôme	Solitude	40,000
22.225	Islamic	Carpet with a Large Octagon and Four Small Octagons	37,500
26.120	Unknown	The Flagellation	37,500
26.89	Thomas Sully	Dr. Edward Hudson	37,500
30.380	George Grosz	Conversation	37,500
30.446	Islamic	Seven-wick Lamp	37,500
30.460	Islamic	Bowl	37,500
1987.93	Navajo	Wearing Blanket	35,000
1989.50	Alvin Loving	J.E. and the Uptown A's	35,000
1997.8	Sèvres Porcelain Manufactory	Napoléon I	35,000
2001.38	Augusta Savage	Gamin	35,000
25.156	Donatello	Coat of Arms of the Martelli Family	35,000
26.223	Unknown	Window Frame	35,000
28.132	Tibetan	Yamantaka and Minor Deities	35,000
29.318	Antonio Vivarini	Scene from the Life of a Female Saint	35,000
29.342	Unknown	Lady with Phoenix Headdress	35,000



30.274	Unknown	Portrait of an Artist	35,000
53.171	Unknown	Tiger Mask	35,000
53.175	Unknown	Central Asian Musician	35,000
53.176	Unknown	Central Asian Musician	35,000
21.194	Unknown	Saint Catherine	32,500
25.61	Ivan Mestrovic	Contemplation	32,500
27.216	Roman	Cinerary Urn	32,500
22.279	Unknown	Chandelier	31,000
1992.214	Beauford Delaney	Self Portrait	30,000
21.31	Charles Cottet	The Port of Douarnenez	30,000
25.161	Unknown	Candelabrum Relief	30,000
26.129	Unknown	Bas-relief of a Horse	30,000
28.141	Unknown	Gateleg Table	30,000
28.145	Islamic	Dish	30,000
29.250	William Savery	Arm Chair	30,000
25.155	Unknown	Relief	29,000
1992.279	Sèvres Porcelain Manufactory	Fénelon, from the "Great Men" Series	27,500
22.29	Unknown	Drawing Room	27,500
29.259	Alexander Helwig Wyant	Summer Landscape	27,500

31.347	Islamic	Carved Panel, possibly from a cenotaph	27,500
26.155	Unknown	Coat of Arms of the Neapolitan Branch of the Antinori Family	26,500
26.193	Unknown	Roundel with Two Lions (?) in Combat	26,500
26.203	Unknown	Coat of Arms of Federico da Montefeltro	26,500
09.1S1047	Jacob Isaaksz van Ruisdael	Cottage on the Summit of the Hill	25,000
21.196	Unknown	Dish	25,000
74.44	Richard Hunt	Field Section	25,000
22.206	Unknown	Saint Bridget of Sweden	24,000
26.143	Unknown	Coat of Arms of Pope Leo X, of the Deputy Apostolic Legate in Bologna, Archbishop Altobello Averoldi of Brisighella, and of the town of Bologna	24,000
26.183	Unknown	Coat of Arms	23,500
22.246	Unknown	Roundel with Pair of Dragons	22,500
22.247	Unknown	Roundel with Pair of Birds	22,500
26.146	Unknown	Lion	22,500
26.192	Unknown	Roundel with Bird Attacking a Rabbit	22,500
27.210	Arnolfo di Cambio	Angel	22,500
27.573	Unknown	Arm Chair	22,500
26.119	Unknown	An Apostle	21,000
26.205	Unknown	Coat of Arms of the Brancaccio Imbriani Family	21,000
27.217	Roman	Fish	21,000

1986.66	Sam Gilliam	Gram	20,000
21.116	Honore Daumier	Le ventre legislatif	20,000
26.235	Unknown	Lunette	20,000
24.77	Unknown	Lamentation over the Dead Christ	18,500
27.241	Unknown	Coat of Arms, Governor of Duren	18,500
1992.43	Meissen Porcelain Manufactory	Teapot	17,500
26.148	Unknown	Fragment of a Relief	17,500
26.217	Unknown	Coat of Arms of Niccolo Sottile (?)	17,500
26.221	Unknown	Coat of Arms, probably of the Suarez Family	17,500
46.145	Pablo Picasso	Le combat	17,500
22.249	Unknown	Roundel with Lion Passant	16,000
26.219	Unknown	Relief Panel with Birds and Lions	16,000
28.91	Islamic	Dish	16,000
22.245	Unknown	Roundel with Mermaid	15,000
22.248	Unknown	Roundel with Lion Attacking a Deer	15,000
26.156	Unknown	Roundel With a Bird Attacking a Rabbit	15,000
26.187	Unknown	Roundel with Bird Attacking a Rabbit	15,000
26.188	Unknown	Roundel with Bird Attacking a Rabbit	15,000
26.194	Unknown	Roundel with Horsemen in Combat with a Feline Animal	15,000

26.220	Unknown	Relief Fragment	15,000
77.71	Bamgboye of Odo-Owa	Epa Cult Mask	15,000
21.184	Unknown	Crespina Istoriatto	14,000
24.143	Larghetto Painter	Mixing Vessel	14,000
24.147	Dotted Stripe Group, Greek	Fish Plate	14,000
26.170	Unknown	Ciborium Fragment	14,000
26.189	Unknown	Roundel: Two Birds Flanking a Tree	14,000
26.190	Unknown	Roundel with Pair of Birds	14,000
26.197	Unknown	Roundel with Agnes Dei	14,000
28.79	Jean-Baptiste-François Cronier	Mantel Clock	14,000
31.349	Islamic	Tile with Lotus Blossoms	14,000
29.214	Unknown	Standing Bowl	13,500
26.196	Unknown	Roundel with Fox Attacking a Sheep	13,000
26.201	Unknown	Roundel with Two Animals in Combat	13,000
27.220	Unknown	Coat of Arms of the Pasqui or possibly Bernardi Family	13,000
2002.136.1	Fletcher and Gardiner	Coffee Pot	12,500
26.215	Unknown	Coat of Arms of Federico da Montefeltro	12,500
09.1S932	Rembrandt Harmensz van Rijn	Angel Departing from the Family of Tobias	12,000
47.160	Rembrandt Harmensz van Rijn	Angel Departing from the Family of Tobias	12,000

24.11	Greek	Flask	11,750
26.213	Unknown	Coat of Arms of the Fiaschi Family	11,500
1993.24	C. F. A. Voysey	Arm Chair	11,000
26.212	Unknown	Coat of Arms of the Pucci delle Stelle Family	11,000
27.221	Unknown	Coat of Arms, possibly of the Gioacchini Family	11,000
79.37	Pende	Mask	11,000
26.202	Unknown	Coat of Arms, Probably of the 'Capitani del Bigallo'	10,500
26.209	Unknown	Coat of Arms of the Gazola Family	10,500
26.214	Unknown	Coat of Arms of the Courtot de Cissey Family	10,500
1994.3.A	Boston & Sandwich Glass Company	Overlaid Glass Lamp	10,000
52.130	Edgar Degas	Horses in the Meadow	10,000
24.12	Painter of the Lowering Bulls	Bottle	9,750
30.457	Islamic	Jug	9,750
27.218	Unknown	Sarcophagus	9,500
30.431	Islamic	Mirror with Benedictory Inscription	9,250
1993.49	Robert Moskowitz	Hard Ball III	9,000
26.191	Unknown	Roundel with Bird Attacking a Rabbit	9,000
26.206	Unknown	Coat of Arms, Probably of the Nini Family	9,000
26.208	Unknown	Coat of Arms of the Swiss Luder Family and of the Lund Family, from Schleswig	9,000

26.210	Unknown	Coat of Arms, unidentified Italian or possibly of the Michault de St-Mars Family	9,000
25.149	Unknown	Cassone	8,500
26.158	Unknown	Madonna and Child with Saints and Angels	8,500
30.447	Islamic	Base of a Lamp Stand wwith Benedictory Inscription	8,500
78.43	Unknown	Capital	8,500
70.95	Guro	Standing Female Figure	8,130
62.70	Rembrandt Harmensz van Rijn	Descent from the Cross by Torchlight	8,000
1995.5	Allie McGhee	Night Ritual	7,500
2011.2	Alison Saar	Blood/Sweat/Tears	7,500
26.207	Unknown	Coat of Arms, Probably of the Tafuri	7,500
29.252	John E. Elliott	Mirror	7,500
26.157	Unknown	Relief Fragment with a Bird	7,000
26.200	Unknown	Roundel with a Feline Animal Attacking a Rabbit	7,000
26.211	Unknown	Coat of Arms of the Medici Family	7,000
26.216	Unknown	Keystone	7,000
39.657	Unknown	Writing Table	7,000
26.204	Unknown	Coat of Arms, Probably of the Della Gherardesca Family	6,500
27.275.A	Roman	Earring	6,500
29.308	Alexander Rood	Tankard	6,500

29.309	David King	Two-Handled Cup	6,500
49.288	Joseph Anthony, Jr.	Sauceboat	6,500
22.232	Georg Vest	The Ascension	5,500
26.154	Palestinian	Ampulla	5,500
2008.5	Georges de Feure	Vase	5,000
F66.40	Rembrandt Harmensz van Rijn	Adoration of the Shepherds	5,000
27.274.A	Roman	Earring	4,750
26.178	Bertoldo di Giovanni	Triumph of Love	4,500
29.386	Islamic	Fragment of a Tiraz Textile with Multiple Inscriptions (illegible)	4,250
30.462	Islamic	Bowl Inscribed "Increasing Prosperity, Wealth"	4,250
25.83	Unknown	Capital: Sinner Fleeing from a Chimera	4,000
25.84	Unknown	Capital: Two Heads between Foliate Forms	4,000
30.461	Islamic	Bowl	4,000
31.54	Islamic	Dish	4,000
24.88	Valerio Belli	Mythological Subject	3,250
09.1S969	Rembrandt Harmensz van Rijn	Cottage beside a Canal: A View of Diemen	3,000
24.86	Valerio Belli	The Judgement of Paris	3,000
26.218	Unknown	Decorative Relief	3,000
30.440	Islamic	Pierced-work Lamp Section with Benedictory Inscription	3,000

69.359	Pablo Picasso	Sueño y Mentira de Franco (Planche I)	3,000
90.1S14462	Kongo	Male Figure	3,000
24.78	Jacopo Sansovino	Madonna and Child with the Young Saint John	2,750
24.84	Antonio Abondio	Pieta with Two Cherubs	2,750
30.442	Islamic	Spigot	2,750
30.452	Iranian	Vase	2,100
1994.94.1A	Boston & Sandwich Glass Company	Jewel Casket	2,000
1996.13	Boston & Sandwich Glass Company	Lacy Compote	2,000
26.195	Unknown	Roundel with Bust of Christ	2,000
48.250	Henri Matisse	L'Avaleur de sabres	2,000
30.433	Islamic	Mirror Case	1,650
30.434	Islamic	Mortar	1,500
30.439.A	Islamic	Ewer inscribed "Prosperity, favor"	1,500
26.152	Byzantine	Adoration of the Kings	1,250
26.404	Simon Gate	Bowl	1,250
29.225	Islamic	Mirror with a Harpy	1,200
26.177	Unknown	Relief Fragment	1,150
09.1S976	Rembrandt Harmensz van Rijn	Young Man in a Velvet Cap	1,000
29.392	Islamic	Fragment of a Tiraz Textile	1,000



59.80	Rembrandt Harmensz van Rijn	Bust of a Man Wearing a High Cap, Three-Quarters Right: The Artist's Father(?)	1,000
29.227	Islamic	Mirror with Flying Phoenixes	925
30.437	Persian	Lamp with Benedictory Inscription	925
30.438	Persian	Lamp with Benedictory Inscription	925
26.255	Villanovan	Pin	500
1990.19	Asante	Soul Washers Badge	400
29.224	Persian	Mirror with Benedictory Inscription	400
79.28.2	Suzuki Kiitsu	Reeds and Cranes	-

**Attachment K**

**Step 2 Attachment Supplement**

**I. CHRISTIE'S REPORT:**

VWA reviewed Christie's Appraisals, Inc.'s ("Christie's") "Fair Market Value for Financial Planning" ("Christie's Report") dated December 17, 2013, attached as Exhibit 2 to the Expert Report of Vanessa Fusco, dated July 8, 2014, and considered all values Christie's ascribed to works at the DIA.

Christie's Phase	Christie's # of Objects	Christie's Low Value	Christie's High Value	Christie's Average Value
0	1032	-	-	
1	326	421,572,850	805,167,200	613,370,025
2	119	29,620,000	55,800,000	42,710,000
3	1296	3,085,145	6,030,040	4,557,593
<b>Grand Total</b>	<b>2773</b>	<b>454,277,995</b>	<b>866,997,240</b>	<b>660,637,618</b>

**PHASE 1: SUMMARY OF CHRISTIE'S REPORT**

Christie's Phase 1	Sum of Christie's Low Value	Sum of Christie's High Value	Sum of Christie's # of Objects
19th Century European Art	2,000,000	3,000,000	1
20th Century Decorative Art & Design	410,500	824,000	9
African & Oceanic Art	850,000	1,600,000	2
American Art	12,220,000	25,870,000	17
American Furniture & Decorative Arts	120,000	218,000	8
American Indian Art	300,000	500,000	8
Antiquities	2,272,400	6,187,800	26
Architectural Elements	1,185,800	2,358,500	68
Chinese Ceramics & Works of Art	600,000	1,300,000	2
European Furniture, Sculpture and Decorative Objects	3,442,000	7,833,500	57
Impressionist & Modern Art	172,470,000	328,420,000	25
Islamic Art	3,021,150	7,378,400	44
Old Master Paintings	219,230,000	412,190,000	36
Porcelain, European Ceramics & Glass	1,308,000	3,268,000	9
Pre-Columbian Art	40,000	60,000	1
Prints & Multiples	15,000	25,000	1
Silver & Objects of Vertu	55,000	89,000	9
Indian & Southeast Asian Art	2,000,000	4,000,000	1
Post-War & Contemporary Art	33,000	45,000	2
<b>Grand Total</b>	<b>421,572,850</b>	<b>805,167,200</b>	<b>326</b>

**PHASE 2: SUMMARY OF CHRISTIE'S REPORT**

Christie's Phase 2	Sum of Christie's Low Value	Sum of Christie's High Value	Sum of Christie's # of Objects
20th Century Decorative Art & Design	200,000	400,000	1
African & Oceanic Art	400,000	660,000	4
American Art	3,050,000	6,510,000	9
American Indian Art	40,000	60,000	1
Antiquities	290,000	1,165,000	9
Books & Manuscripts	125,000	300,000	7
Chinese Ceramics & Works of Art	2,130,000	5,030,000	13
Chinese Paintings	1,000,000	1,800,000	2
European Furniture, Sculpture and Decorative Objects	110,000	270,000	3
Impressionist & Modern Art	5,195,000	10,570,000	27
Islamic Art	175,000	300,000	3
Japanese Art	280,000	410,000	5
Modern British Art	250,000	600,000	1
Old Master Drawings	12,100,000	20,180,000	3
Old Master Paintings	2,330,000	4,360,000	19
Prints & Multiples	345,000	535,000	7
Russian Art	830,000	1,350,000	2
Indian & Southeast Asian Art	770,000	1,300,000	3
<b>Grand Total</b>	<b>29,620,000</b>	<b>55,800,000</b>	<b>119</b>

**ALL PHASES: CHRISTIE'S REPORT TOP 15 WORKS BY VALUE**

Christie's Lot Num.	Artist	Title	Christie's Low Value	Christie's High Value	Christie's Average Value
244	Pieter Bruegel the Elder	The Wedding Dance	100,000,000	200,000,000	150,000,000
197	Vincent Willem van Gogh	Self Portrait	80,000,000	150,000,000	115,000,000
266	Rembrandt Harmensz van Rijn	The Visitation	50,000,000	90,000,000	70,000,000
186	Henri Matisse	The Window	40,000,000	80,000,000	60,000,000
176	Edgar Degas	Dancers in the Green Room	20,000,000	40,000,000	30,000,000
188	Claude Monet	Gladioli	12,000,000	20,000,000	16,000,000
376	Michelangelo	Scheme for the Decoration of the C	12,000,000	20,000,000	16,000,000
240	Neri di Bicci	Tobias and Three Archangels	8,000,000	15,000,000	11,500,000
256	Frans Hals	Portrait of Hendrik Swalmius	6,000,000	10,000,000	8,000,000
270	Michael Sweerts	In the Studio	5,000,000	10,000,000	7,500,000
264	Antoine Le Nain	The Village Piper	6,000,000	8,500,000	7,250,000
239	Giovanni Bellini	Madonna and Child	4,000,000	10,000,000	7,000,000
268	Sassetta	The Procession to Calvary	5,000,000	8,000,000	6,500,000
21	John Singer Sargent	Mosquito Nets	4,500,000	8,000,000	6,250,000
247	Jean Siméon Chardin	Still Life with Dead Hare	5,000,000	7,000,000	6,000,000
250	Jan van Eyck	Saint Jerome in His Study	4,000,000	8,000,000	6,000,000

**II. ARTVEST REPORT:**

VWA reviewed Artvest Partners LLC’s (“Artvest”) July 8, 2014 report “Expert Witness Report of Michael Plummer” (“Artvest Report”) and considered all values Artvest ascribed to works at the DIA.

**ARTVEST REPORT’S GROUP 3:  
“HIGH VALUE, NON-COD WORKS IN THE DIA COLLECTION, THAT DIA  
VALUED FOR INSURANCE PURPOSES OR OTHERWISE OF \$1,000,000 OR MORE.”**

<b>Artvest Category</b>	<b>Artvest Low Value</b>	<b>Artvest High Value</b>	<b>Artvest Average Value</b>	<b>Count of Objects</b>
Africa, Oceania & Indigenous America	3,100,000	5,200,000	4,150,000	6
American Art Before 1950	222,355,000	325,885,000	274,120,000	86
Ancient Near Eastern Art	80,000,000	180,000,000	130,000,000	3
Asian Art	200,000	300,000	250,000	1
Contemporary Art after 1950	238,800,000	318,700,000	278,750,000	25
European Modern Art to 1950	371,880,000	518,140,000	445,010,000	51
European Painting	601,790,000	861,470,000	731,630,000	120
European Sculpture and Decorative Arts	46,150,000	72,000,000	59,075,000	49
Islamic Art	80,000	150,000	115,000	1
Prints, Drawings & Photographs	4,940,000	8,160,000	6,550,000	6
Timepieces	60,000	80,000	70,000	1
<b>Grand Total</b>	<b>1,569,355,000</b>	<b>2,290,085,000</b>	<b>1,929,720,000</b>	<b>349</b>

**ARTVEST REPORT’S TOP 15 WORKS BY VALUE**

<b>Artvest OBS</b>	<b>Artist</b>	<b>Title</b>	<b>Artvest Low Value</b>	<b>Artvest High Value</b>	<b>Artvest Average Value</b>
181	Vincent Willem van Gogh	Portrait of Postman Roulin	80,000,000	120,000,000	100,000,000
166	Pablo Picasso	Melancholy Woman	60,000,000	80,000,000	70,000,000
96	Neo-Assyrian	Tiglath-Pileser III Receiving Homag	40,000,000	80,000,000	60,000,000
83	Frederic Edwin Church	Cotopaxi	40,000,000	60,000,000	50,000,000
95	Neo-Babylonian	Snake-Dragon, Symbol of Marduk,	30,000,000	70,000,000	50,000,000
169	Pablo Picasso	Woman Seated in an Armchair	40,000,000	60,000,000	50,000,000
187	Vincent Willem van Gogh	Bank of the Oise at Auvers	40,000,000	50,000,000	45,000,000
115/116	Andy Warhol	Self Portrait: Former Double Self Po	40,000,000	50,000,000	45,000,000
121	Barnett Newman	Be I (second version)	35,000,000	45,000,000	40,000,000
54	James Abbott McNeill Whistler	Nocturne in Black and Gold, the Fal	25,000,000	45,000,000	35,000,000
111	Mark Rothko	Orange, Brown	30,000,000	40,000,000	35,000,000
188	Paul Cezanne	Madame Cezanne	30,000,000	40,000,000	35,000,000
277	Michelangelo Merisi da Caravaggio	Martha and Mary Magdalene	30,000,000	40,000,000	35,000,000
143	Franz Marc	Animals in a Landscape	25,000,000	40,000,000	32,500,000
197	Georges Pierre Seurat	View of Le Crottoy from Upstream	20,000,000	40,000,000	30,000,000

### III. WINSTON REPORT

VWA reviewed Winston Art Group’s (“Winston”) report “Fair Market Value Appraisal” (the “Winston Report”) for property in the collection of the DIA and considered all values Winston ascribed as of March 25<sup>th</sup>, 2014.

Winston Group Categories	Winston Count of Objects	Sum of Winston Value
Fine Art	483	1,645,631,950
Furniture, Decorative Art, Silver , and Armor	39	21,575,500
Other	60	75,038,300
<b>Grand Total</b>	<b>582</b>	<b>1,742,245,750</b>

#### WINSTON REPORT BREAKDOWN BY CLASSIFICATIONS

Winston Classifications	Winston Count of Objects	Sum of Winston Values	Percentage by Classification
African	13	4,057,900	0.23%
Ancient Near East	4	39,000,000	2.24%
Armor	5	3,550,000	0.20%
Asian	20	21,795,000	1.25%
Badge	1	400	0.00%
Decorative	6	1,251,500	0.07%
Easter Island	1	250,000	0.01%
Egyptian	4	2,355,000	0.14%
Fine Art	483	1,645,631,950	94.45%
Furniture	9	6,124,000	0.35%
Greco-Roman	5	6,920,000	0.40%
Islamic	4	-	0.00%
Native American	6	535,000	0.03%
Pre-Columbian	2	125,000	0.01%
Silver	15	9,650,000	0.55%
Tapestry	4	1,000,000	0.06%
<b>Grand Total</b>	<b>582</b>	<b>1,742,245,750</b>	<b>100.00%</b>

**WINSTON REPORT'S TOP 15 WORKS BY VALUE**

Winston OBS	Artist	Title	Winston Values
390	Vincent Willem van Gogh	Portrait of Postman Roulin	100,000,000
37	Michelangelo Merisi da Caravaggio	Martha and Mary Magdalene	50,000,000
230	Henri Matisse	Coffee	50,000,000
281	Pablo Picasso	Melancholy Woman	50,000,000
389	Vincent Willem van Gogh	Bank of the Oise at Auvers	40,000,000
322	Mark Rothko	Orange, Brown	40,000,000
318	Auguste Rodin	The Thinker	35,000,000
465	Andy Warhol	Self Portrait: Former Double Self Po	30,000,000
162	Alberto Giacometti	Standing Woman II	30,000,000
283	Pablo Picasso	Woman Seated in an Armchair	30,000,000
9	Francis Bacon	Study for Crouching Nude	28,000,000
50	Paul Cezanne	Madame Cezanne	25,000,000
391	Vincent Willem van Gogh	The Diggers	25,000,000
369	Clyfford Still	Untitled 1951-T, No. 2	22,000,000
224	Franz Marc	Animals in a Landscape	22,000,000

**IV. OVERVIEW OF THIRD-PARTY VALUATIONS**

**OVERVIEW OF VALUATION BY NUMBER OF ITEMS**

DIA Insurance Value Buckets	DIA's # of Items	Artvest's # of Items	Christie's # of Items	VWA's # of Items	Winston's # of Items
a. >= 50M	10	7	3	10	7
b. >= 25M, < 50M	18	17	1	16	17
c. >= 10M, < 25M	53	50	3	42	51
d. >= 5M, < 10M	55	39	13	32	39
e. >= 2M, < 5M	125	106	18	57	105
f. >= 750K, < 2M	275	130	29	61	148
g. >= 500K, < 750K	157		10	11	12
h. >= 100K, < 500K	1,433		55	51	64
i. >= 2.5K, < 100K	5,970		127	32	52
j. < 2.5K	9,082		56	5	6
No DIA insurance and no valuation by any party	42,854				3
No DIA insurance and valuation by at least one party	193		130	70	78
<b>Grand Total</b>	<b>60,225</b>	<b>349</b>	<b>445</b>	<b>387</b>	<b>582</b>

## OVERVIEW OF TOTAL VALUATION BY AVERAGE VALUE

DIA Insurance Value Buckets	DIA's Insurance Value	Artvest's Average Value	Christie's Average Value	VWA's Average Value	Winston's Average Value
a. >= 50M	635,000,000	338,000,000	335,000,000	865,000,000	245,000,000
b. >= 25M, < 50M	579,000,000	360,125,000	60,000,000	575,000,000	280,250,000
c. >= 10M, < 25M	739,000,000	446,900,000	42,250,000	850,350,000	467,775,000
d. >= 5M, < 10M	335,000,000	298,625,000	47,740,000	356,000,000	162,650,000
e. >= 2M, < 5M	352,800,000	315,430,000	78,950,000	510,750,000	314,255,000
f. >= 750K, < 2M	286,060,000	170,640,000	35,455,000	270,489,000	211,430,000
g. >= 500K, < 750K	88,298,702		3,110,000	12,019,000	5,670,000
h. >= 100K, < 500K	192,488,232		18,436,500	97,308,750	47,428,770
i. >= 2.5K, < 100K	105,254,838		23,315,150	13,047,500	3,574,030
j. < 2.5K	5,026,605		1,971,625	77,750	42,750
No DIA insurance and no valuation by any party	0				0
No DIA insurance and valuation by at least one party	0		9,851,750	16,319,750	4,170,200
<b>Grand Total</b>	<b>3,317,928,376</b>	<b>1,929,720,000</b>	<b>656,080,025</b>	<b>3,566,361,750</b>	<b>1,742,245,750</b>

## OVERVIEW OF THIRD-PARTY VALUATION

DIA Insurance Value Buckets	# of Units that were valued by third parties	Average Value of VWA and if not available, average value of independent third parties
a. >= 50M	10	865,000,000
b. >= 25M, < 50M	18	577,937,500
c. >= 10M, < 25M	52	874,000,000
d. >= 5M, < 10M	51	401,715,000
e. >= 2M, < 5M	123	608,440,000
f. >= 750K, < 2M	173	360,911,500
g. >= 500K, < 750K	23	15,404,000
h. >= 100K, < 500K	120	115,663,520
i. >= 2.5K, < 100K	165	33,299,680
j. < 2.5K	55	2,052,375
No DIA insurance and valuation by at least one party	193	23,308,500
<b>Grand Total</b>	<b>983</b>	<b>3,877,732,075</b>




## OVERVIEW OF THIRD PARTY VALUATION (EXPANDED)

DIA Insurance Value Buckets	# of Units valued		# of Units that	Total Average Value of VWA	Total Average Value of	Total Average Value of VWA or
	# of Units valued by VWA	by Independent third parties	were value by VWA or Independent		Independent third parties	Independent third parties
a. >= 50M	10		10	865,000,000		865,000,000
b. >= 25M, < 50M	16	2	18	575,000,000	2,937,500	577,937,500
c. >= 10M, < 25M	42	10	52	850,350,000	23,650,000	874,000,000
d. >= 5M, < 10M	32	19	51	356,000,000	45,715,000	401,715,000
e. >= 2M, < 5M	57	66	123	510,750,000	97,690,000	608,440,000
f. >= 750K, < 2M	61	112	173	270,489,000	90,422,500	360,911,500
g. >= 500K, < 750K	11	12	23	12,019,000	3,385,000	15,404,000
h. >= 100K, < 500K	51	69	120	97,308,750	18,354,770	115,663,520
i. >= 2.5K, < 100K	32	133	165	13,047,500	20,252,180	33,299,680
j. < 2.5K	5	50	55	77,750	1,974,625	2,052,375
No DIA insurance and valuation by at least one party	70	123	193	16,319,750	6,988,750	23,308,500
<b>Grand Total</b>	<b>387</b>	<b>596</b>	<b>983</b>	<b>3,566,361,750</b>	<b>311,370,325</b>	<b>3,877,732,075</b>


**Attachment L**

**Step 3 Attachment**

**OVERVIEW OF AGE OF DIA INSURANCE VALUE FOR ENTIRE COLLECTION**

DIA Insurance Value Buckets	 DIA's # of Items	DIA's Insurance Value	Weighted Average Age
a. >= 50M	10	635,000,000	5.5 yrs
b. >= 25M, < 50M	18	579,000,000	3.9 yrs
c. >= 10M, < 25M	53	739,000,000	4.9 yrs
d. >= 5M, < 10M	55	335,000,000	6.4 yrs
e. >= 2M, < 5M	125	352,800,000	10.4 yrs
f. >= 750K, < 2M	275	286,060,000	10.4 yrs
g. >= 500K, < 750K	157	88,298,702	12.0 yrs
h. >= 100K, < 500K	1,433	192,488,232	13.2 yrs
i. >= 2.5K, < 100K	5,970	105,254,838	14.7 yrs
j. < 2.5K	9,082	5,026,605	15.3 yrs
No DIA insurance and no valuation by any party	42,854	0	
No DIA insurance and valuation by at least one party	193	0	
<b>Grand Total</b>	<b>60,225</b>	<b>3,317,928,376</b>	<b>7.1 yrs</b>

**OVERVIEW OF AGE OF DIA INSURANCE VALUE FOR THOSE WORKS THAT HAVE DIA INSURANCE VALUES AND NO THIRD-PARTY VALUES**

DIA Insurance Value Buckets	 # of Units valued by DIA Insurance only	Sum of Average DIA Insurance Value	Weighted Average Age
c. >= 10M, < 25M	1	10,000,000	17.8 yrs
d. >= 5M, < 10M	4	24,000,000	14.3 yrs
e. >= 2M, < 5M	2	5,000,000	8.0 yrs
f. >= 750K, < 2M	102	82,230,000	10.6 yrs
g. >= 500K, < 750K	134	75,423,702	12.0 yrs
h. >= 100K, < 500K	1,313	167,760,232	13.2 yrs
i. >= 2.5K, < 100K	5,805	99,072,904	14.6 yrs
j. < 2.5K	9,027	4,962,700	15.3 yrs
<b>Grand Total</b>	<b>16,388</b>	<b>468,449,537</b>	<b>13.0 yrs</b>

## COMPARISON OF DIA INSURANCE VALUE AND VWA VALUE

DIA Insurance Value Buckets	DIA's # of Items	DIA's Insurance Value	Weighted Average Age	VWA's Average Value	Annualized % Increase
a. >= 50M	10	635,000,000	5.5 yrs	865,000,000	6.6%
b. >= 25M, < 50M	16	510,000,000	3.9 yrs	575,000,000	3.3%
c. >= 10M, < 25M	42	605,000,000	4.8 yrs	850,350,000	8.4%
d. >= 5M, < 10M	32	196,000,000	7.3 yrs	356,000,000	11.1%
e. >= 2M, < 5M	57	166,500,000	12.1 yrs	510,750,000	17.1%
f. >= 750K, < 2M	61	70,050,000	11.7 yrs	270,489,000	24.5%
g. >= 500K, < 750K	11	6,175,000	12.2 yrs	12,019,000	7.8%
h. >= 100K, < 500K	51	10,848,000	15.0 yrs	97,308,750	53.2%
i. >= 2.5K, < 100K	32	1,234,234	16.6 yrs	13,047,500	57.6%
j. < 2.5K	5	4,605	16.5 yrs	77,750	96.3%
No DIA insurance and valuation by at least one party	70	0		16,319,750	
<b>Grand Total</b>	<b>387</b>	<b>2,200,811,839</b>	<b>5.9 yrs</b>	<b>3,566,361,750</b>	<b>10.5%</b>

## PROJECTED CURRENT MARKET VALUE OF DIA INSURANCE VALUE NOT COVERED BY THIRD PARTY VALUES

DIA Insurance Value Buckets	# of Units valued by DIA Insurance only	Initial Sum of Average DIA Insurance Value	Market Appreciation Rate	Projected Sum of Average DIA Insurance Value
c. >= 10M, < 25M	1	10,000,000	62.0%	16,200,000
d. >= 5M, < 10M	4	24,000,000	62.0%	38,880,000
e. >= 2M, < 5M	2	5,000,000	62.0%	8,100,000
f. >= 750K, < 2M	102	82,230,000	62.0%	133,212,600
g. >= 500K, < 750K	134	75,423,702	62.0%	122,186,397
h. >= 100K, < 500K	1,313	167,760,232	62.0%	271,771,575
i. >= 2.5K, < 100K	5,805	99,072,904	62.0%	160,498,104
j. < 2.5K	9,027	4,962,700	62.0%	8,039,573
<b>Grand Total</b>	<b>16,388</b>	<b>468,449,537</b>	<b>62.0%</b>	<b>758,888,249</b>

**Attachment M**

**Step 4 Attachment**

Cat.	Department	Avg Price	Africa, Oceania & Indigenous Americas	American Art before 1950 & African American Art	Ancient Near Eastern & Greco-Roman & Ancient European	Asian & Islamic Art	Contemporary Art after 1950	European Modern Art to 1950	European Painting	European Sculpture and Dec Arts	Prints, Drawings & Photographs, Performing Art, & Textiles	TOTAL PORTFOLIO VALUE (ex. High Value Arts)
			5,632	1,566	1,679	6,877	1,023	253	95	4,962	20,767	42,854
	% Premium and/or Discount		0.0%	0.0%	25.0%	15.0%	15.0%	15.0%	10.0%	15.0%	(10.0%)	
1	19th Century European	110,904							3,863,140			3,863,140
2	American Art	464,418		363,639,547								363,639,547
3	Antiquities	80,049			168,003,344							168,003,344
4	Arms & Armor	8,166								7,766,225		7,766,225
5	Asian Art (MIX)	77,216				122,132,628						122,132,628
6	Asian Contemporary	420,795					165,014,781					165,014,781
7	Chinese Paintings	196,647				311,038,220						311,038,220
8	Chinese WOA	179,882				284,521,390						284,521,390
9	Decorative Arts	15,811								15,036,800		15,036,800
10	European Interiors	32,291								30,710,284		30,710,284
11	European WOA	61,556								58,543,166		58,543,166
12	Japanese WOA	33,035				52,252,107						52,252,107
13	Latin American	185,579		145,308,679								145,308,679
14	Judaica	36,054								34,288,815		34,288,815
15	Modern & Imp	599,703						174,483,480				174,483,480
16	Native American	31,113	87,612,909									87,612,909
17	Oceanic	136,072	383,177,943									383,177,943
18	Old Masters	294,186							10,247,492			10,247,492
19	Photographs	46,262									432,328,608	432,328,608
20	Post war	562,196					220,465,012					220,465,012
21	Prints	30,857									288,359,796	288,359,796
22	Russian Art	160,601							5,594,285			5,594,285
23	Silver	22,033								20,954,154		20,954,154
24	South Asian Contemporary	122,804					48,157,630					48,157,630
25	Southeast Asian	50,016				79,111,593						79,111,593
	<b>TOTAL</b>		470,790,851	508,948,226	168,003,344	849,055,938	433,637,424	174,483,480	19,704,918	167,299,444	720,688,404	3,512,612,030

- Average price per department was calculated based on Christie's and Sotheby's 2013 sales figures as detailed in Exhibit E of the Artvest report;
- These prices were then applied linearly across the applicable DIA departments using averages for instances where multiple departments overlap;
- The table above illustrates this methodology and resulting compilation in the form of a pricing matrix;
- For the category of Prints, Drawings, and Photographs: Apply 10% discount to account for works by less collected artists, which may be offset by a number of works by extremely well-known and highly collected artists
- Supplements have been applied to the categories:
  - Ancient Near Eastern & Greco-Roman & Ancient European (25%): because of the verifiable provenance and the fact that in most cases the objects entered the museum prior to the UNESCO Convention on Cultural Property of 1970
  - Asian & Islamic Art (15%): because of the strong market interest in this category
  - Contemporary Art after 1950 (15%): because of the strong market interest in this category; however, the supplement has been kept low to be conservative
  - European Modern Art to 1950 (15%): because this market is very selective, and because of the strength of DIA's holdings in this category; this is conservative
  - European Painting (10%): because most of the paintings in this category have been valued individually and the remaining paintings are less important and, as such, we have ascribed a conservative supplement
  - European Sculpture and Decorative Art (15%): this is a conservative supplement because of the large variety of objects within this sector

**Exhibit B**



1 UNITED STATES BANKRUPTCY COURT  
2 EASTERN DISTRICT OF MICHIGAN  
3 SOUTHERN DIVISION

4 In re: )  
5 CITY OF DETROIT, MICHIGAN, )  
6 Debtor. ) Chapter 9  
7 vs. ) Case No. 13-53846  
8 -----) Hon. Steven W. Rhodes

9  
10  
11  
12  
13 VIDEOTAPED DEPOSITION OF VICTOR WIENER

14 New York, New York

15 Monday, August 4, 2014  
16  
17  
18  
19  
20  
21  
22  
23

24 Reported by:  
25 MICHELLE COX  
JOB NO.: 215823

<p style="text-align: right;">Page 2</p> <p>1 2 3 4 August 4, 2014 5 9:02 a.m. 6 7 Videotaped Deposition of VICTOR WIENER, 8 held at the offices of Jones Day, 222 East 41st 9 Street, New York, New York, pursuant to Notice, 10 before Michelle Cox, a Notary Public of the 11 State of New York. 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 A P P E A R A N C E S: (Cont'd.) 2 3 WEIL, GOTSHAL &amp; MANGES LLP 4 Attorneys for the Financial Insurance 5 Guaranty Company 6 700 Louisiana, Suite 1700 7 Houston, Texas 77002-2755 8 BY: ALFRED R. PEREZ, ESQ. 9 DANA KAUFMAN, ESQ. 10 11 DENTONS 12 Attorneys Official Committee of Retirees 13 1221 Avenue of the Americas 14 New York, New York 10020-1089 15 BY: ARTHUR H. RUEGGER, ESQ. 16 17 CLARK HILL PLC 18 Attorneys for Detroit Retirement Systems 19 212 East Grand River 20 Lansing, Michigan 48906 21 BY: MICHAEL J. PATTWELL, ESQ. 22 23 ALSO PRESENT: Jim Brady, Videographer 24 25</p>
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<p style="text-align: right;">Page 3</p> <p>1 A P P E A R A N C E S: 2 3 HONIGMAN MILLER SCHWARTZ AND COHN LLP 4 Attorneys for Detroit Institute of Fine Arts 5 2290 First National Building 6 660 Woodward Avenue 7 Detroit, Michigan 48226-3506 8 BY: JASON R. ABEL, ESQ. 9 10 CRAVATH, SWAINE &amp; MOORE LLP 11 Attorneys for Detroit Institute of Fine Arts 12 825 Eight Avenue 13 New York, New York 10019-7475 14 BY: RICHARD LEVIN, ESQ. 15 16 JONES DAY 17 Attorneys for City of Detroit 18 51 Louisiana Avenue NW 19 Washington, D.C. 20001-2113 20 BY: GEOFFREY S. IRWIN, ESQ. 21 ALEX BLANCHARD, ESQ. (Telephonically) 22 23 24 25</p>	<p style="text-align: right;">Page 5</p> <p>1 INDEX 2 WITNESS EXAMINATION BY PAGE 3 VICTOR WIENER MR. ABEL 8 4 5 6 INFORMATION REQUESTS 7 8 REQUESTS: ,20 9 MOTIONS: ,204 10 11 EXHIBITS 12 DEPOSITION EXHIBITS FOR ID. 13 Exhibit 1 Notice of Deposition 11 14 Exhibit 2 Portion of the Work File 17 15 Exhibit 3 Expert Report 36 16 Exhibit 4 2014-2015 USPAP Standards 97 17 Exhibit 5 Extract from the USPAP 127 18 Frequently Asked Questions 19 Exhibit 6 Printout From the American 172 20 Alliance Museum's Website 21 Exhibit 7 Document Entitled "All about 270 22 Appraisal: The Definitive 23 Appraisal Handbook" 24 Exhibit 8 Supplemental Receipt and 325 25 Commitment 26 Exhibit 9 Article Entitled "Unique 330 27 Aspects of Appraising Large 28 Scale Art"</p>
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Page 6

1 IT IS HEREBY STIPULATED AND AGREED  
 2 by and between the attorneys for the respective  
 3 parties herein, that filing and sealing be and  
 4 the same are hereby waived.  
 5 IT IS FURTHER STIPULATED AND AGREED  
 6 that all objections, except as to the form of  
 7 the question, shall be reserved to the time of  
 8 the trial.  
 9 IT IS FURTHER STIPULATED AND AGREED  
 10 that the within deposition may be sworn to and  
 11 signed before any officer authorized to  
 12 administer an oath, with the same force and  
 13 effect as if signed and sworn to before the  
 14 Court.  
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Page 7

1 THE VIDEOGRAPHER: Today's date is  
 2 August 4, 2014. The time is 9:04 a.m.  
 3 My name is Jim Brady. I'm the  
 4 videographer here today at the law firm of  
 5 Jones Day, 222 East 41st Street, New York, New  
 6 York, here today in the matter of Detroit  
 7 Bankruptcy.  
 8 Today's witness' name is Victor Wiener.  
 9 I'd ask to have the attorneys please  
 10 introduce themselves, and for the court  
 11 reporter to swear in the witness.  
 12 MR. ABEL: Good morning.  
 13 Jason Abel on behalf of the Detroit  
 14 Institute of Art Corporation -- Corp.  
 15 MR. IRWIN: Jeff Irwin, Jones Day, on  
 16 behalf of the City of Detroit.  
 17 MR. RUEGGER: Arthur Ruegger from Dentons,  
 18 on behalf of the Retirees Committee.  
 19 MR. PEREZ: Alfredo Pérez, Weil Gotshal,  
 20 on behalf of Financial Insurance Guaranty  
 21 Company.  
 22 MS. KAUFMAN: Dana Kaufman, also from Weil  
 23 Gotshal, on behalf of Financial Guaranty  
 24 Insurance Company.  
 25 MR. PEREZ: And also present is

Page 8

1 David Shapiro, who is one of Mr. Wiener's  
 2 collaborators.  
 3 THE VIDEOGRAPHER: Would folks on the  
 4 phone wish to introduce themselves, please.  
 5 MR. BLANCHARD: Sure.  
 6 This is Alex Blanchard of Jones Day on  
 7 behalf of the City.  
 8 MR. ABEL: Anyone else on the phone?  
 9 Okay.  
 10 V I C T O R W I E N E R, called as a witness,  
 11 having been duly sworn by a Notary Public, was  
 12 examined and testified as follows:  
 13 MR. ABEL: Thank you.  
 14 EXAMINATION BY  
 15 MR. ABEL:  
 16 Q Good morning, sir.  
 17 As I said, my name is Jason Abel. I'm  
 18 here representing the Detroit Institute of Art  
 19 Corp.  
 20 What is your name, for the record?  
 21 A Victor Wiener.  
 22 Q And how do you spell your last name?  
 23 A W-I-E-N-E-R.  
 24 Q Have you ever been deposed before, sir?  
 25 A I have.

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1 Q Approximately how many times?  
 2 A I'd say between 10 or 15.  
 3 Q So you're an "old hat" at the deposition  
 4 process. I won't belabor the ground rules, but  
 5 for the purposes of this deposition, I'm going  
 6 to be asking you a series of questions. If I  
 7 ask you a question and you don't understand it,  
 8 please let me know and I'll try to clarify it.  
 9 Do you understand?  
 10 A I do.  
 11 Q And if you don't ask me to clarify it, I,  
 12 as the trier of the facts in the case, will  
 13 assume that you understand what I'm talking  
 14 about and answered to the best of your  
 15 recollection.  
 16 Okay?  
 17 A That's fine.  
 18 Q The court reporter is going to be here.  
 19 She's going to be transcribing your testimony,  
 20 and typing quickly.  
 21 Because the court reporter is transcribing  
 22 your testimony it's important that all of our  
 23 communications be oral. She can't take down  
 24 nods of the head or shakes of the head.  
 25 Do you understand?

http://www.yeslaw.net/da3p

<p style="text-align: right;">Page 10</p> <p>1 A I do.</p> <p>2 Q And also it's difficult to take down</p> <p>3 things like uh-huh and uh-uhs, for the record.</p> <p>4 So try to keep your answers to "yeses, nos" and</p> <p>5 more verbal communications.</p> <p>6 Okay?</p> <p>7 A I understand.</p> <p>8 Q Great.</p> <p>9 And if at any time during the process you</p> <p>10 need a break, let me know. If we're not in the</p> <p>11 middle of a question, I'll try to accommodate</p> <p>12 you.</p> <p>13 A Thank you.</p> <p>14 Q I also like to use some abbreviations</p> <p>15 during the course of the deposition to try to</p> <p>16 help things move faster.</p> <p>17 So if I use the term "DIA," I'll be</p> <p>18 referring to the art museum, not the</p> <p>19 corporation.</p> <p>20 Does that make sense?</p> <p>21 A Definitely.</p> <p>22 Q Perfect.</p> <p>23 And if I refer to "VWA," you understand</p> <p>24 that to mean Victor Wiener Associates, LLC?</p> <p>25 A That is correct.</p>	<p style="text-align: right;">Page 12</p> <p>1 deposition, other than talk with counsel?</p> <p>2 A I reviewed pertinent documents.</p> <p>3 Q And what pertinent documents did you</p> <p>4 review?</p> <p>5 A I reviewed our report. I reviewed the</p> <p>6 attachments to the report. I reviewed the</p> <p>7 deposition testimony of Elizabeth von Habsburg.</p> <p>8 I reviewed very briefly deposition extracts of</p> <p>9 Michael Plummer.</p> <p>10 Q And when you say "deposition extracts" of</p> <p>11 Michael Plummer, who extracted those</p> <p>12 depositions?</p> <p>13 A Mr. Perez.</p> <p>14 Q And what extracts of Mr. Plummer's</p> <p>15 deposition did you review?</p> <p>16 A If I recall correctly, Mr. Plummer, the</p> <p>17 extracts that I reviewed concerned the</p> <p>18 methodology we applied in our present report.</p> <p>19 Q So you reviewed extracts relating to your</p> <p>20 report in this case?</p> <p>21 A That is correct.</p> <p>22 Q Did you talk with anyone other than</p> <p>23 counsel to prepare for today's deposition?</p> <p>24 A No.</p> <p>25 I did solicit a written response from</p>
<p style="text-align: right;">Page 11</p> <p>1 Q And if I refer to "ACG," you understand</p> <p>2 that to be Art Capital Group?</p> <p>3 A Yes.</p> <p>4 (Deposition Exhibit 1, Notice of</p> <p>5 Deposition, marked for identification as of</p> <p>6 this date.)</p> <p>7 BY MR. ABEL:</p> <p>8 Q Okay. I'm showing you a document -- I'm</p> <p>9 showing you a document that's marked -- can you</p> <p>10 tell me, actually, what's been marked at the</p> <p>11 bottom?</p> <p>12 A Sorry?</p> <p>13 Q Is it Deposition 1 or Wiener Exhibit 1?</p> <p>14 A It says "Deposition Exhibit 1."</p> <p>15 Q Okay. I'm showing you a document that's</p> <p>16 marked Deposition Exhibit 1.</p> <p>17 Have you ever seen this before?</p> <p>18 A Yes.</p> <p>19 Q And am I correct that this is the notice</p> <p>20 of video deposition for you?</p> <p>21 A Yes.</p> <p>22 Q And you're appearing today pursuant to</p> <p>23 this notice of deposition?</p> <p>24 A I am.</p> <p>25 Q Did you do anything to prepare for today's</p>	<p style="text-align: right;">Page 13</p> <p>1 Zhang Yi who wrote a report to -- who wrote a</p> <p>2 report that was attached to our report, which</p> <p>3 was questioned by Mr. Plummer. And I asked him</p> <p>4 to respond to that in a brief way, if he could.</p> <p>5 Q And when did you communicate with Zhang</p> <p>6 Yi?</p> <p>7 A Yesterday afternoon.</p> <p>8 Q And did you get a response from him?</p> <p>9 A I got a brief response.</p> <p>10 Q And what did he say?</p> <p>11 A He said in the response that he thought he</p> <p>12 stood by what he said, and that he thought</p> <p>13 that, again, Mr. Plummer's conclusions were</p> <p>14 unsupported in relation to the TEFAF report.</p> <p>15 Q Did you talk with anyone else to prepare</p> <p>16 for today's deposition?</p> <p>17 A Other than David Shapiro, who works with</p> <p>18 me.</p> <p>19 Q And what did you talk about with</p> <p>20 Mr. Shapiro?</p> <p>21 A Just reviewed our report.</p> <p>22 Q Anything specific in the report that you</p> <p>23 reviewed with Mr. Shapiro?</p> <p>24 A Generally speaking.</p> <p>25 Q Okay. And other than the documents you</p>

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1 mentioned previously, did you review any other  
 2 documents in preparation for today?  
 3 A To the best of my recollection, no, at  
 4 this moment.  
 5 Q Do you maintain a work file for this  
 6 engagement?  
 7 A Yes, I do.  
 8 Q And am I -- well, let me take a step back.  
 9 Have you ever heard the term "Uniform  
 10 Standards Professional Appraisal Practice"  
 11 before?  
 12 A I have.  
 13 Q If I refer to that as USPAP, would you  
 14 understand to whom I'm referring?  
 15 A Definitely.  
 16 Q Excellent.  
 17 Am I correct that maintenance of a work  
 18 file is required under USPAP?  
 19 A That is correct.  
 20 Q And what is USPAP?  
 21 A USPAP is the -- it stands for Uniform  
 22 Standards of Professional Appraisal Practice.  
 23 It is a document that is issued by an  
 24 organization in Washington called the  
 25 "Appraisal Foundation."

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1 Specifically, the document is issued by a  
 2 subcommittee of the Appraisal Foundation called  
 3 the "Appraisal Standards Board."  
 4 It's issued now on a biannual basis. It  
 5 addresses standards for proper appraisal  
 6 practice, covering all disciplines of  
 7 appraising, which means real property, personal  
 8 property, both appreciable and depreciable  
 9 personal property and business property as  
 10 well.  
 11 Q Do you know why USPAP requires you to  
 12 maintain a work file for your engagements?  
 13 A It requires a work file so -- to make sure  
 14 that everything in the appraisal report has  
 15 been accounted for.  
 16 Q And did you produce your work file in this  
 17 action?  
 18 A I produced -- yes, I did.  
 19 Q When?  
 20 A Upon request.  
 21 Q Did you bring it with you today?  
 22 A No, I did not.  
 23 Q Does the work file for this engagement  
 24 contain information, all the comparables you  
 25 used in forming your opinions of value here?

Page 16

1 A Many of the comparables we used were  
 2 online and are not printed out in the work  
 3 file, but readily obtainable.  
 4 The -- there are some printed comparables  
 5 which we produced.  
 6 Q And if the comparables were identified  
 7 online and not printed out, how do you know  
 8 what comparables you utilized in forming your  
 9 opinions?  
 10 A We certainly discussed it very clearly.  
 11 And it's reflected in our appraisal report.  
 12 Q And are those specific comparables that  
 13 you used for valuing each item of art in your  
 14 report identified somewhere?  
 15 A It's identified in the report, I believe,  
 16 that what we did is part of the appraisal  
 17 process, and it is indeed reflected in the  
 18 values that we assigned.  
 19 Q Other than reflecting the value of the  
 20 comparables in your report, is there anything  
 21 the Court could do in reviewing your opinions  
 22 in this case to determine what comparables you  
 23 utilized for each specific piece of art that  
 24 you valued?  
 25 A I suppose -- I really don't know what the

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1 Court could do or could not do. I am not a  
 2 lawyer, so I can't make that judgment.  
 3 Q Assuming Judge Rosen in this case asked  
 4 you what comparables did you utilize for each  
 5 one of the pieces of art that you valued in  
 6 this case, what would you be able to identify?  
 7 A We would be able to do a printout.  
 8 Q So you have a printout somewhere of every  
 9 comparable you utilized?  
 10 A It's in the computer, not printed out.  
 11 Q And that wasn't part of your work file?  
 12 A In theory it was part of our work file.  
 13 Q And you didn't produce that today?  
 14 A No, because we did not do printouts.  
 15 Q What other items do you have in electronic  
 16 format that you didn't print out as part of  
 17 your work file?  
 18 A To the best of my recollection, that's the  
 19 most substantive.  
 20 Q What's the next most substantive?  
 21 A The substantive, shall we say.  
 22 (Deposition Exhibit 2, Portion of the Work  
 23 File, marked for identification as of this  
 24 date.)  
 25

1 BY MR. ABEL:  
2 Q I'm showing you a document that's been  
3 marked Deposition Exhibit 2.  
4 Is this the portions of the work file that  
5 you mentioned producing earlier in your  
6 testimony today?  
7 A This is the -- give me a moment.  
8 MR. PEREZ: Let me say something before  
9 you respond.  
10 Counsel, in response to the request by, I  
11 believe it was somebody at your firm, we  
12 produced, not only portions of the work file,  
13 but all the communications with Art Capital  
14 Group.  
15 MR. ABEL: Thank you.  
16 MR. PEREZ: So a portion of this, the  
17 front part, are the communications with Art  
18 Capital Group, and then there's also a very  
19 lengthy spreadsheet that was not copied, but it  
20 was also produced natively.  
21 BY MR. ABEL:  
22 Q Let me ask you the question: Is your work  
23 file contained -- well, for the record,  
24 Deposition Exhibit 2 is Bates stamped at the  
25 bottom FGIC Wiener 000001 through 67.

1 Does this contain, absent the native  
2 format file that counsel mentioned, your work  
3 file in this case?  
4 A The printed file, yes.  
5 Q And this is the entire printed work file  
6 as contained between FGIC Wiener 00030 and 62,  
7 absent that electronic portion?  
8 A And perhaps there are electronic documents  
9 that have not been produced, due to the fact  
10 that the request came rather late, and that  
11 some of the experts who worked on it, on the  
12 report --  
13 Q I'm sorry.  
14 A That's okay.  
15 The experts who worked on the report may  
16 not have gathered it as quickly as possible in  
17 compliance with your request.  
18 Q So when you generated the appraisal in  
19 this case, you didn't have access to all of --  
20 so you didn't have possession of all of the  
21 work files of all of the people who were  
22 involved in the process?  
23 A We had verbal communications with  
24 absolutely everyone who was there and we  
25 reviewed the material.

1 Q But you didn't have their work file?  
2 A That's correct. We -- that's not what I  
3 said.  
4 There may be portions of their work file  
5 that weren't printed out.  
6 Q And do you have possession of those  
7 portions of the work file that perhaps weren't  
8 printed out?  
9 A At the moment you have everything that we  
10 have in printed form.  
11 Q Who made the decision to print out  
12 portions of the work file?  
13 A The individual consultants.  
14 Q And did you ask the individual consultants  
15 to provide you with all of the information they  
16 relied upon in their work files?  
17 A Considering the fact that we got the  
18 reports verbally, I then asked them to print it  
19 out.  
20 Some were available to print it out; some  
21 were not.  
22 MR. ABEL: Counsel, for the record, we can  
23 talk about this later. We'd like to see a copy  
24 of the complete electronic file as well.  
25 MR. PEREZ: We'll take that under

1 consideration, but I think you may actually  
2 have it other than third party sources, but we  
3 can talk about it later.  
4 BY MR. ABEL:  
5 Q Let's take a look at the first couple of  
6 pages of Exhibit 2, specifically pages Bates  
7 marked at the bottom FGIC Wiener 000001 through  
8 4.  
9 Can you tell me what this portion of the  
10 document is?  
11 A This is a proposal submitted to Ian Peck  
12 of Art Capital Group on May 23, 2014.  
13 Q Am I correct that this is a proposal that  
14 you drafted to Mr. Peck, correct?  
15 A That's correct.  
16 Q And at the time you drafted this proposal  
17 you had not yet seen an inventory of the DIA  
18 collection; is that right?  
19 A An inventory, no.  
20 Q And if you look at the second to last  
21 paragraph, the last --  
22 A Can we go back?  
23 Q Sure.  
24 A Can you define "an inventory"?  
25 Q Well, sir, do you know what an "inventory"

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<p style="text-align: right;">Page 22</p> <p>1 is?</p> <p>2 A I know what I think of an inventory. But</p> <p>3 I'm asking you to put your definition forward.</p> <p>4 Q Let's make it easy. Why don't you tell</p> <p>5 the Court how you define an inventory.</p> <p>6 A Well, the inventory, the way I define it,</p> <p>7 is a listing of objects.</p> <p>8 An inventory can be either a complete</p> <p>9 inventory or a partial inventory. And that is</p> <p>10 why I asked you for your definition.</p> <p>11 Q So what inventory were you referring to in</p> <p>12 your memo from May 23rd when you wrote,</p> <p>13 "Naturally I'm handicapped at this point in the</p> <p>14 sense that I have not seen an inventory"?</p> <p>15 A I was referring to a complete inventory.</p> <p>16 Q Had you seen a partial inventory?</p> <p>17 A I believe I had in the form of the report</p> <p>18 submitted by Houlihan Lokey. But I cannot be</p> <p>19 100 percent certain of the chronology.</p> <p>20 Q So you're not sure whether or not you had</p> <p>21 seen any inventory on May 23, 2014 of the DIA</p> <p>22 collection?</p> <p>23 A That is correct.</p> <p>24 Q Okay. That's was going to be my next</p> <p>25 question.</p>	<p style="text-align: right;">Page 24</p> <p>1 Exhibit 2, last sentence. You wrote: "What I</p> <p>2 would propose to do is to apply a methodology</p> <p>3 that is as scholarly as possible given the</p> <p>4 parameters of the assignment."</p> <p>5 Did I read that correctly?</p> <p>6 A This is -- I'm sorry. I missed the</p> <p>7 reference.</p> <p>8 Which paragraph?</p> <p>9 Q Looking to the second -- the penultimate</p> <p>10 paragraph of the first page?</p> <p>11 A First page?</p> <p>12 Q Yes, the last sentence.</p> <p>13 You wrote: "What I would propose to do is</p> <p>14 to apply a methodology that is as scholarly as</p> <p>15 possible given the parameters of the</p> <p>16 assignment"; is that right?</p> <p>17 A That is what I wrote.</p> <p>18 Q Why did you propose applying a methodology</p> <p>19 that is as scholarly as possible?</p> <p>20 A Because I thought that was commensurate</p> <p>21 with the assignment.</p> <p>22 Q What is a "scholarly methodology"?</p> <p>23 A Scholarly methodology is looking at all</p> <p>24 the pertinent literature, assessing it, and</p> <p>25 coming to a valuation conclusion based upon the</p>
<p style="text-align: right;">Page 23</p> <p>1 A Oh, wait. I take that back.</p> <p>2 Other than published inventory in the</p> <p>3 handbook that I did review.</p> <p>4 Q Okay. So when you're writing to Mr. Peck</p> <p>5 in May of 2014 saying that you have not seen an</p> <p>6 inventory, given your definition that inventory</p> <p>7 be partially or complete, you are</p> <p>8 misrepresenting Mr. Peck, correct?</p> <p>9 A No.</p> <p>10 Q You had seen an inventory at that time,</p> <p>11 right?</p> <p>12 A I had seen -- I had seen a partial</p> <p>13 inventory.</p> <p>14 Q And by your definition that's an</p> <p>15 inventory, right?</p> <p>16 A By definition, if you specify it is an</p> <p>17 inventory, and that is why I asked you. It</p> <p>18 could be considered -- it should be qualified</p> <p>19 as a partial inventory.</p> <p>20 Q Did you qualify it in your proposal to</p> <p>21 Mr. Peck as to what you were doing in this</p> <p>22 case?</p> <p>23 A No, I didn't.</p> <p>24 Q Let's jump to the next question.</p> <p>25 Second to last paragraph, first page of</p>	<p style="text-align: right;">Page 25</p> <p>1 review.</p> <p>2 Q Ad how does that differ from a</p> <p>3 non-scholarly methodology?</p> <p>4 A Non-scholarly methodology, in my</p> <p>5 definition, is one that I would consider to be</p> <p>6 the "finger-in-the-air" methodology.</p> <p>7 Q You believe that there's another</p> <p>8 methodology called "a finger-in-the-air"</p> <p>9 methodology?</p> <p>10 A It's a methodology that I would define.</p> <p>11 Q Would you agree with me that different</p> <p>12 appraisers use different methodologies?</p> <p>13 A I do.</p> <p>14 Q And there's no single right methodology to</p> <p>15 doing an appraisal?</p> <p>16 A There is a single right methodology.</p> <p>17 Q You mentioned the fingers-in-the-air</p> <p>18 appraisal method.</p> <p>19 What is that method?</p> <p>20 A That method is intuitively, I believe, the</p> <p>21 object would be worth A, B or C, or D.</p> <p>22 Q And what does that have to do with</p> <p>23 "fingers in the air"?</p> <p>24 A It's pulling the value out of the air,</p> <p>25 literally.</p>

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1 Q So you mean fingers in the air is people  
 2 raising their fingers into the air an pulling  
 3 appraisals values for?  
 4 A I think it was worth this.  
 5 Q You mean people raise their fingers, give  
 6 you an opinion of value and you take the  
 7 consensus of that value?  
 8 A No. I say people raise their finger and  
 9 give a value. I didn't say anything about  
 10 consensus.  
 11 Q How frequently do people utilize that  
 12 methodology?  
 13 A Frequently.  
 14 Q So it's standard in the industry for  
 15 people to use the fingers-in-the-air method to  
 16 come up with a value for a work of art?  
 17 A What industry are you referring to?  
 18 Q The valuation industry.  
 19 A I would consider it to be a profession.  
 20 Q Okay. In the profession?  
 21 A It is not appropriate standards, in my  
 22 opinion.  
 23 Q So why do you refer to it as a methodology  
 24 and indicate that many people in the profession  
 25 utilize it?

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1 MR. PEREZ: Object to the form of the  
 2 question. Assumes facts not in evidence.  
 3 BY MR. ABEL:  
 4 Q Who uses the fingers-in-the-air  
 5 methodology?  
 6 A Primarily auction houses.  
 7 Q How many auction houses are there?  
 8 A There are numerous auction houses.  
 9 Q And how many people in those auction  
 10 houses use the fingers-in-the-air methodology  
 11 to value art?  
 12 A Hundreds, if not thousands.  
 13 Q Is that the methodology used by Christie's  
 14 and Sotheby's?  
 15 A In many cases, I believe so.  
 16 Q Have you ever heard of a methodology for  
 17 valuing art called the "French grid system"?  
 18 A I have.  
 19 Q And what is that?  
 20 A The French grid system is a method that  
 21 was in favor, at one point or another, in which  
 22 a small section of a work of art was -- well, a  
 23 work of art was divided into sections,  
 24 literally a small section was valued in a  
 25 certain way, and then by mathematical extension

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1 in the grid, it was determined this is the  
 2 value of the whole would be.  
 3 Q And is the French grid system ever used to  
 4 value a collection of arts by taking the value  
 5 of a chunk of the collection and extrapolating  
 6 the full value from that chunk?  
 7 A The French grid system is generally  
 8 applied to specific works of art and not a  
 9 whole collection.  
 10 Q Why not?  
 11 A It's common usage within those who apply  
 12 it to apply it that way.  
 13 Q Let's look at the second page of  
 14 Deposition Exhibit 2 marked FGIC Wiener 000002.  
 15 There's a section entitled "Suggested Steps to  
 16 be Taken."  
 17 Do you see that?  
 18 A That is correct.  
 19 Q And under that "Suggested Steps to be  
 20 Taken" item you list suggested steps that you  
 21 suggest that should be taken in valuing the DIA  
 22 collection; is that right?  
 23 A That's correct.  
 24 Q Did you utilize this methodology that you  
 25 indicate on this page of Exhibit 2 before, in

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1 valuing an art collection?  
 2 A In valuing?  
 3 Q An art collection?  
 4 A An art collection?  
 5 Q Yes.  
 6 A Have I -- I don't understand the question.  
 7 Q Let me rephrase.  
 8 Have you ever used these steps that you  
 9 detail on the second page of Exhibit 2 in  
 10 valuing an art collection before?  
 11 A Can you repeat the question?  
 12 Q Sure.  
 13 Have you ever used these steps that you  
 14 detail on Page 2 of Exhibit 2 in valuing an art  
 15 collection before?  
 16 A I have.  
 17 Q How frequently?  
 18 A When one has to value an extremely large  
 19 collection of works of art.  
 20 Q And how frequently have you valued an  
 21 extremely large collection of art before?  
 22 A I've think one or two or three times.  
 23 Q Well, let's be exact.  
 24 A One very recently, and I believe in the  
 25 past we've used it as well.

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<p style="text-align: right;">Page 30</p> <p>1 Q And when you say "one very recently," are 2 you referring to the DIA collection? 3 A No. 4 Q What collection are you referring to? 5 A I cannot tell you. That would be 6 violating confidentiality. 7 Q Did you have a confidentiality agreement 8 with the client in that case? 9 A I did. 10 Q And when did that take place? 11 A The valuation took place last year. 12 Q And what was the type of art involved? 13 A Fine art. 14 Q Any specific type of fine art? 15 A What do you mean by "specific type"? 16 Q Sure. 17 Are we talking about contemporary art, Old 18 Masters, any more specificity you can provide 19 on that case? 20 A Contemporary art. 21 Q Sorry? 22 A Contemporary art. 23 Q Contemporary art. 24 And we're talking about paintings versus 25 sculptures or decorative art?</p>	<p style="text-align: right;">Page 32</p> <p>1 Second paragraph you wrote: "Recently we 2 appraised for state tax purposes the enormous 3 and varied collection of an extremely famous 4 American artist. At this moment I'm not at 5 liberty to mention the name of the artist. The 6 inventory consists of approximately 20,000 7 objects." 8 Is that right? 9 A That's correct. 10 Q Is that the project you were just 11 referring to? 12 A Yes, it is. 13 Q And you performed that appraisal for 14 estate tax purposes, correct? 15 A I did. 16 Q So you weren't asked to determine what the 17 collection would achieve in terms of actual 18 dollars to the owner of the collection if it 19 was sold? 20 A That's not true. 21 Q What -- do you understand if I ask you the 22 question -- sorry, let me take a step back. 23 Have you ever heard of the term 24 "definition of value before"? 25 A Yes.</p>
<p style="text-align: right;">Page 31</p> <p>1 A We're talking about two dimensional art. 2 Q And what was the size of that collection? 3 A What do you mean by "size"? 4 Q Volume of works. 5 A About 20,000. 6 Q And what was your ultimate value 7 conclusion for those 20,000 pieces? 8 A Is the question what value did I conclude? 9 Q Yes. 10 A I can't tell you that. 11 Q Can you give me a ballpark? 12 Was it over a billion dollar? 13 MR. PEREZ: If he can't tell you, he can't 14 tell you. 15 A It's a possible violation of my 16 confidentiality agreement. 17 BY MR. ABEL: 18 Q And you said you used this methodology 19 detailed on Page 2 of Exhibit 2 to perform that 20 valuation of the 20,000 works? 21 A I did. 22 Q Let's look at the next page of Deposition 23 Exhibit 2. 24 A Is that Page 3? 25 Q Yes.</p>	<p style="text-align: right;">Page 33</p> <p>1 Q And what do you understand definition of 2 value to mean? 3 A Exactly what the term says, the value 4 being used is defined. 5 Q And what definition of value did you 6 utilize in that estate tax purpose appraisal? 7 A Fair market value. 8 Q You didn't use marketable cash value? 9 A I did not. 10 Q And you had two months to perform that 11 appraisal of the 20,000 objects; is that right? 12 A Slightly under. 13 Q How much under? 14 A I would say more like six or eight -- six 15 to eight weeks. 16 Q And was the collection by the American 17 artist a collection of pieces that the artist 18 himself or herself generated or was that artist 19 collecting other people's work? 20 A It was a collection of both. 21 Q And what portion of the collection 22 belonged to that -- sorry. Let me strike that. 23 What portion of that collection was 24 generated by that artist as opposed to 25 collected by the artist?</p>

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1 A A significant portion.  
 2 Q Over 50 percent?  
 3 A I really think that by saying that I may  
 4 violate my confidentiality agreement.  
 5 Q Did you provide a copy of that appraisal  
 6 to the IRS?  
 7 A Presumably the client did.  
 8 Q So you don't know -- do you know whether  
 9 the IRS approved your appraisal?  
 10 A We -- I've heard from the client that  
 11 there's been absolutely, what shall we say, no  
 12 objection from the IRS.  
 13 Q So let's go back to my question.  
 14 Do you know if the IRS has approved your  
 15 appraisal?  
 16 A The IRS, I don't think, sends out letters  
 17 of approval.  
 18 Q Let me go back to my question: Do you  
 19 know whether or not the IRS approved your  
 20 appraisal?  
 21 A And my answer is, no.  
 22 Q Did you use the methodology detailed on  
 23 Page 2 of Exhibit 2 to value the DIA  
 24 collection?  
 25 A I'm sorry. We're going back to Page 2?

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1 Q Yes.  
 2 A And what was your question?  
 3 Q Sure.  
 4 Did you used this methodology that you say  
 5 you utilized to value the 20,000 works in this  
 6 undisclosed appraisal to value the DIA  
 7 collection?  
 8 A In part, yes.  
 9 Q And what parts did you use?  
 10 A We -- shall we go back step by step?  
 11 Q Sure.  
 12 A Okay. Each category should be divided  
 13 into groupings, we did.  
 14 Q And how did you divide the DIA collection  
 15 into groupings?  
 16 A We basically worked with the groupings  
 17 that the DIA used in its cataloging.  
 18 Q You mean groupings by type of art?  
 19 A Correct.  
 20 Q Okay. Not groupings by value of art?  
 21 A Within those groupings we also did  
 22 subdivisions with a value of art, yes.  
 23 Q And how did you utilize the Step 2  
 24 detailed in Page 2 of Exhibit 2 to value the  
 25 DIA collection?

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1 A We followed that fairly closely.  
 2 Q Am I correct that you had four different  
 3 steps in your methodology for valuing the DIA  
 4 collection?  
 5 A I had four different steps -- the answer  
 6 to your question is no.  
 7 Q If you look at your report, am I correct  
 8 that you detail four steps for valuing the DIA  
 9 collection?  
 10 A Well, if I could look at my report I could  
 11 answer the question properly.  
 12 (Deposition Exhibit 3, Expert Report,  
 13 marked for identification as of this date.)  
 14 BY MR. ABEL:  
 15 Q I'm showing you a document that's been  
 16 marked Deposition Exhibit 5.  
 17 Is this your report in this matter?  
 18 A It's marked Deposition Exhibit 3, I  
 19 believe.  
 20 Q Sorry. Deposition Exhibit 3, you're  
 21 correct.  
 22 Is that your report in this matter?  
 23 A Well, without checking every page, I can  
 24 say that it appears to be my report.  
 25 Q Take a look at Page 49 of Exhibit 3.

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1 My question for you is: Is that your  
 2 signature at the bottom of Page 49?  
 3 A That is my signature.  
 4 Q I think I misspoke earlier. Maybe that's  
 5 why you're correcting me.  
 6 If you look at Page 3 of Exhibit 3, it  
 7 details five steps to your methodology; is that  
 8 right?  
 9 A Yes, there are five steps labeled.  
 10 Q Okay. And so my question for you is,  
 11 looking back at Exhibit 2, any suggested steps  
 12 to be taken, specifically the Paragraph 2, that  
 13 starts off by saying, "Appropriate comparables  
 14 for each group should be identified."  
 15 What step in your report does Step 2 in  
 16 your proposal correspond with?  
 17 A Step 1.  
 18 Q Does it correspond to any of the other  
 19 steps in your report?  
 20 MR. PEREZ: Object to the form of the  
 21 question.  
 22 BY MR. ABEL:  
 23 Q You can answer.  
 24 A Sure. I'm just looking at the report.  
 25 It corresponds to portions of Step 3 and

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<p style="text-align: right;">Page 38</p> <p>1 portions of Step 4.                  2 Q We'll come back to that in a bit.                  3 Take a look at Item 3 on Exhibit 2. You                  4 indicate --                  5 A Exhibit 2 is the memo; is that correct?                  6 Q Right. Where you indicate "a general                  7 analysis, the common factors one sees in a                  8 comparable selected should be stated."                  9 What does that correspond to in the steps                  10 detailed in your report, Exhibit 3?                  11 A This step was not followed specifically                  12 the way it was written in the proposal.                  13 Q Why not?                  14 A It was a question of time.                  15 Q You didn't have enough time to do Step 3                  16 in your proposal?                  17 A It was -- Step 3 was basically subsumed                  18 into our analysis of comparables.                  19 Q Is there some document that you could                  20 point me to where you detail the common factors                  21 one sees in the comparables selected?                  22 A It is not written in the report.                  23 Q So you didn't actually state that anywhere                  24 in your report or any other work files?                  25 A It's not stated in the report.</p>	<p style="text-align: right;">Page 40</p> <p>1 right?                  2 A It says "at this point."                  3 Q Am I correct that as of May 23, 2014 you                  4 had determined that no discount was appropriate                  5 for the valuation of the DIA collection?                  6 MR. PEREZ: Object as to form.                  7 BY MR. ABEL:                  8 Q You can answer.                  9 A I'm looking at exactly what I wrote.                  10 In a preliminary point of view, yes.                  11 Q Did you ever determine that a discount                  12 would be appropriate for the valuation of the                  13 DIA collection?                  14 A If you look at my report, you will see                  15 that there are discounts that I consider to be                  16 appropriate.                  17 Q What discounts did you consider to be                  18 appropriate?                  19 A If you look at Step 4, you'll see that the                  20 art is divided into various categories and that                  21 some of the categories have a discount or no                  22 discount.                  23 Q And am I correct the only discount that                  24 you utilized in your entire report was a                  25 10 percent discount on prints, drawings and</p>
<p style="text-align: right;">Page 39</p> <p>1 Q Is it in your work files?                  2 A It's in the work file in the sense of the                  3 analysis of the comparables that we used.                  4 Q It's not specifically, or explicitly                  5 stated; am I correct?                  6 A Not explicitly stated.                  7 Q Let's take a look at Page 4 of Exhibit 2,                  8 under the topic "Matters Not Discussed."                  9 Do you see that?                  10 A Yes.                  11 Q And if you look at the second sentence you                  12 wrote: "It is my opinion at this point that                  13 such a discount consideration would not be                  14 appropriate for the report since, presumably,                  15 there are numerous potential buyers for all of                  16 the works in the DIA collection, and if the                  17 works were to be sold they would not be sold at                  18 a single sale but numerous sales spread over                  19 time."                  20 Do you see that?                  21 A That is correct.                  22 Q And so on May 23, 2014, before ever seeing                  23 the complete inventory of the DIA collection,                  24 you had formed an opinion that consideration of                  25 discounts would not be appropriate; is that</p>	<p style="text-align: right;">Page 41</p> <p>1 photographs, performing arts and textiles                  2 through to Step 4?                  3 A That is not correct.                  4 Q What else did you apply a discount to?                  5 A In step -- hang on.                  6 In Step 3 where we adjusted the insurance                  7 values to correspond to marketable cash value,                  8 we provided a discount.                  9 Q What discounts did you provide there?                  10 A Well, we provided an increment, a global                  11 increment of 10.9 percent, and had we brought                  12 it up to retail replacement value it probably                  13 would have been higher. And that in my mind                  14 would qualify as a discount.                  15 Q So you applied a supplement, but because                  16 the supplement wasn't higher you're telling the                  17 Court that constituted a discount?                  18 A I am.                  19 MR. PEREZ: I object to the form of the                  20 question.                  21 BY MR. ABEL:                  22 Q Sorry. What was your answer?                  23 A The answer is, yes, I am.                  24 Q And what was the amount of the discount                  25 that you applied with regard to Step 3?</p>

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1 A That it was an adjustment, and I can't  
 2 tell you the exact figure at this point.  
 3 **Q You can't tell the Court the quantity of**  
 4 **the discount that you applied for Step 3?**  
 5 MR. PEREZ: Object to the form of the  
 6 question. Asked and answered.  
 7 BY MR. ABEL:  
 8 **Q You can answer.**  
 9 A Okay. Yes, the exact number I'm not  
 10 prepared to tell you at this particular point.  
 11 **Q Were you ever prepared to tell me what the**  
 12 **exact number was for that discount?**  
 13 A It figured into our calculations.  
 14 **Q But you don't know what it was that**  
 15 **figured into your calculations?**  
 16 A At this particular point, no.  
 17 **Q Is there any document that you could look**  
 18 **at that would inform your opinion as to what**  
 19 **that discount was for Step 3?**  
 20 A Perhaps careful review would reveal that.  
 21 **Q What would you look at to find that**  
 22 **information?**  
 23 A I would look at a projection of retail  
 24 replacement value. But since we were using  
 25 marketable cash value it was implicit in the

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1 value arrived at.  
 2 **Q Well, if we were to test whether or not**  
 3 **your conclusion regarding the amount of that**  
 4 **discount was correct, how could we go about**  
 5 **doing so?**  
 6 A It would be very difficult to test.  
 7 **Q So the Court just has to assume that**  
 8 **you're correct?**  
 9 A The Court has to assume that I did what I  
 10 stated in the report, which was carry forward  
 11 or make a percentage adjustment based upon the  
 12 difference between the retail replacement  
 13 values, presumably. We don't even know if  
 14 those are retail replacement values in the DIA  
 15 inventory, and our marketable cash value, which  
 16 by definition implicitly has a discount built  
 17 in.  
 18 **Q You say marketable cash value implicitly**  
 19 **has a discount built in?**  
 20 A Correct.  
 21 **Q What is the amount of that discount that**  
 22 **marketable cash value has built into it?**  
 23 A It varies from case to case. There's no  
 24 specific amount.  
 25 **Q Well, in this case what was the discount**

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1 **that you applied to determine marketable cash**  
 2 **value?**  
 3 MR. PEREZ: Object to the form of the  
 4 question.  
 5 A I'm not quite sure I understand your  
 6 question.  
 7 When -- can you clarify that?  
 8 BY MR. ABEL:  
 9 **Q Sure.**  
 10 **You said that there is a discount utilized**  
 11 **in coming up with marketable cash value that**  
 12 **varies from case to case.**  
 13 **My question for you is: What discount did**  
 14 **you utilize in coming up with marketable cash**  
 15 **value in this case?**  
 16 MR. PEREZ: Object to the form of the  
 17 question.  
 18 A From object to object, we looked at the  
 19 comparables. We saw -- we observed whether the  
 20 comparables were hammer prices, included the  
 21 buyers premium, did not, and we discounted  
 22 those values when appropriate, on a  
 23 case-by-case basis to come up with marketable  
 24 cash value.  
 25

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1 BY MR. ABEL:  
 2 **Q Is there someplace we can look in your**  
 3 **work file to see what discount you applied on**  
 4 **an object-by-object basis to come up with**  
 5 **marketable cash value?**  
 6 A The values are reflective of it and we did  
 7 not specify or write in it. But by use of the  
 8 comparables, you can check it.  
 9 **Q Does the hammer price you're referring to**  
 10 **before ever include buyers premium?**  
 11 A Hammer's price does not include buyers  
 12 premium.  
 13 **Q Never include buyers premium.**  
 14 A By definition, no.  
 15 **Q When you're referring to the process that**  
 16 **you utilized for taking into account discount**  
 17 **in a piece by piece appraisal, am I correct**  
 18 **that was only with regard to Step 1 of your**  
 19 **appraisal not Steps 2 through 4?**  
 20 A The question again?  
 21 **Q Sure.**  
 22 **You said that in looking at pieces on a**  
 23 **piece-by-piece basis, you applied a discount to**  
 24 **determine marketable cash value.**  
 25 **Am I correct you only did that with regard**

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1 to Step 1 of your methodology, not Steps 2  
 2 through 4?  
 3 A You're not correct.  
 4 Q What discount did you utilize in  
 5 determining marketable cash value for Step 2?  
 6 A In Step 2 we didn't do it on a  
 7 piece-by-piece basis.  
 8 Q Well, did you do it on a collection basis?  
 9 A We -- on the basis of Step 2 we took into  
 10 consideration the various values that third  
 11 party sources used, and on that  
 12 determination -- on that basis, we made a  
 13 determination whether any specific discounts  
 14 should be applied or not applied.  
 15 Q Did you apply any discounts to the results  
 16 of Step 2?  
 17 Let me take a step back. Step 2 you  
 18 averaged together third-party appraisals,  
 19 correct?  
 20 A Correct.  
 21 Q Did you apply any discount to that  
 22 average?  
 23 A It was implicit in the methodology.  
 24 Q How was it implicit in the methodology?  
 25 A Because the third-party sources that we

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1 used were generally lower than our individual  
 2 values.  
 3 Consequently, on the 616 objects, we  
 4 considered that those prices were -- that those  
 5 values, I mean, were discounted in relation to  
 6 ours, and, therefore, conservative.  
 7 So it was intentional for us to use  
 8 conservative values incorporating third-party  
 9 sources.  
 10 Q So my question for you is much simpler  
 11 than that.  
 12 Did you apply a discount to the amount  
 13 that you determined by averaging the  
 14 third-party prices?  
 15 A And my answer was before, yes.  
 16 Q Let's take a step back.  
 17 You averaged the third-party appraisals,  
 18 correct?  
 19 A Correct. We averaged -- no, that's not  
 20 correct.  
 21 Q What did you do in Step 2?  
 22 A We averaged the individual values in the  
 23 third-party appraisals.  
 24 Q And what did you do with the results of  
 25 that average?

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1 A It was implicit in the results that a  
 2 discount was --  
 3 Q Sir, I am going to ask questions, and I  
 4 appreciate if you listen to my question. I'm  
 5 not asking about what's implicit.  
 6 MR. ABEL: Can you please read back the  
 7 question.  
 8 BY MR. ABEL:  
 9 Q It's much simpler than that.  
 10 (Record read.)  
 11 BY MR. ABEL:  
 12 Q You can answer.  
 13 A You stated it.  
 14 Q You stated the average in your report?  
 15 A Correct.  
 16 Q You didn't make any adjustments to the  
 17 results of that averaging process in your  
 18 report?  
 19 MR. PEREZ: Object to the form of the  
 20 question.  
 21 A But -- and my answer is that it was  
 22 implicit in the results.  
 23 BY MR. ABEL:  
 24 Q I'm asking you: Did you make any  
 25 adjustments to the results of the averaging

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1 process you just disclosed?  
 2 MR. PEREZ: Object to the form. Asked and  
 3 answered.  
 4 BY MR. ABEL:  
 5 Q You can actually answer.  
 6 A I can answer. I understand.  
 7 And my answer is it was implicit in the  
 8 results.  
 9 Q Let's take a step back.  
 10 When you say something is implicit in the  
 11 results, does that mean that you actually made  
 12 an adjustment to achieve the results, or that  
 13 you just utilized the results because you felt  
 14 they were satisfactory?  
 15 MR. PEREZ: Object to the form of the  
 16 question.  
 17 A We used the results because we thought it  
 18 was satisfactory with an implicit discount  
 19 built in.  
 20 BY MR. ABEL:  
 21 Q Other than the discount that you believe  
 22 was implicit in the results, did you apply any  
 23 additional discounts after averaging the  
 24 information with the third-party appraisers?  
 25 A No.

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1 Q Looking back at Exhibit 2, again, and  
 2 again Page 4.  
 3 If you look at the second paragraph, you  
 4 write: "However, as you pointed out there is  
 5 the possibility that parts of the collection be  
 6 sold as a whole or in block."  
 7 Do you recall that?  
 8 A Which page are you referring to?  
 9 Q Page 4. FGIC Wiener 000004.  
 10 A I have the paragraph.  
 11 What is the question?  
 12 Q Is that a statement that Mr. Peck of ACG  
 13 provided to you?  
 14 A Sir, can you just repeat the question.  
 15 Q Sure. You wrote, "However, as you had  
 16 pointed out, there is the possibility that  
 17 parts of the collection could be sold as a  
 18 whole or in block."  
 19 Is that something that Mr. Peck told you?  
 20 A Yes.  
 21 Q And you then wrote: "If this were to  
 22 occur and that the parties involved were  
 23 considered to be appropriate, we could also  
 24 calculate a blockage discount consideration  
 25 since we have on staff an economist who does

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1 this type of work for us."  
 2 Do you see that?  
 3 A I do.  
 4 Q Did you take into account the possibility  
 5 that the DIA collection could be sold as a  
 6 whole or in block in your appraisal?  
 7 A I did.  
 8 Q And how did you take that into account?  
 9 A It's written within the report.  
 10 Q Did you apply any blockage discounts in  
 11 your report?  
 12 A We did not.  
 13 Q So how did you take into account the  
 14 possibility that parts of the collection could  
 15 be sold as a whole or in block?  
 16 A One would have to turn to my report to see  
 17 exactly what was written, and what we took into  
 18 consideration.  
 19 Q Sorry, sir.  
 20 You don't know your opinion as to why you  
 21 didn't apply a blockage discount in this case?  
 22 A It's stated clearly in the report and I  
 23 would prefer to refer to it to get it exactly  
 24 right.  
 25 Q You understand that at trial you're not

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1 going to be relying upon your report; you're  
 2 going to be testifying to the judge as to your  
 3 own opinions?  
 4 MR. PEREZ: Object to the form of the  
 5 question. Assumes facts not in evidence.  
 6 BY MR. ABEL:  
 7 Q Do you need to have your report in front  
 8 of you at all times to express your opinions to  
 9 the Court?  
 10 A No.  
 11 Q Okay. So what is your opinion as to why a  
 12 blockage discount wasn't necessary in this  
 13 case?  
 14 MR. PEREZ: Object to the form of the  
 15 question.  
 16 A Because, as I stated in the report, the --  
 17 at the time that the report was written it was  
 18 apparent that the collection was not going to  
 19 be sold on block and that, therefore, a  
 20 blockage discount was not to be applied.  
 21 Q Who told you it was apparent?  
 22 Well, let's take a step back.  
 23 How was it apparent that the DIA  
 24 collection would not be sold on block?  
 25 A At the moment it was our determination

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1 that it was most likely that if anything were  
 2 to be sold the pieces would be sold  
 3 individually, and I think that is clearly  
 4 stated in the report.  
 5 Q And how did you form that assumption?  
 6 A By the nature of the collection; by the  
 7 fact that we were -- that we were writing this  
 8 report primarily for the use of the collection  
 9 in a collateralized transaction. And in that  
 10 particular scenario, there would not be a  
 11 blockage discount applicable, it would not be  
 12 sold in block. It would not be sold at all.  
 13 It would be used as collateral.  
 14 Q So if the Court orders the DIA collection  
 15 to be sold on block, your valuation appraisal  
 16 wouldn't be sufficient to identify the blockage  
 17 discount in that case?  
 18 MR. PEREZ: Object to the form of the  
 19 question. It assumes facts not in evidence  
 20 and, in fact, completely contradictory to the  
 21 record.  
 22 MR. ABEL: Well, it's a hypothetical.  
 23 BY MR. ABEL:  
 24 Q So my hypothetical is: Assume that the  
 25 DIA collection was forcibly sold on block, how

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1 who that impact your analysis in this case?  
 2 A Well, it is a hypothetical question so  
 3 there might be other factors that I don't  
 4 understand. But presumably, in that case, a  
 5 blockage discount may or may not be applicable.  
 6 Q And when would it be applicable?  
 7 A I would have to see the exact hypothetical  
 8 circumstances. The exact circumstances, it  
 9 would not longer be hypothetical.  
 10 Q Have you ever been involved in a valuation  
 11 for purposes of determining the value of an art  
 12 collection in a bankruptcy proceeding before?  
 13 A No.  
 14 Q Take a look at Page 6 of Exhibit 2.  
 15 Is this an e-mail that you sent to  
 16 Mr. Plummer of ACG on July 17, 2014?  
 17 A I believe you mean Mr. Peck.  
 18 Q Sorry, Mr. Peck. My apologies.  
 19 A And this is -- I'm sorry.  
 20 Q Page 6.  
 21 A Are we looking at --  
 22 Q Exhibit 2.  
 23 A Exhibit 2.  
 24 Q You might have taken it apart.  
 25 A Exhibit 2, I believe -- you said Page 6?

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1 Q FGIC Wiener 000006 as well?  
 2 A That's not Exhibit 2, though. Oh, wait.  
 3 This is something else.  
 4 Q Let's try to keep the binder clips on  
 5 there so that we're not mixing it with other  
 6 pages.  
 7 A It's very difficult to work with binder  
 8 clips, I must say.  
 9 But it's not Exhibit 2. It's a different  
 10 exhibit. Exhibit 2, I believe, was just this  
 11 memo. But if it's all the documents produced.  
 12 I'm not sure --  
 13 Q Let's put it back together the way it was.  
 14 So Exhibit 2 was documents Bates-stamped  
 15 FGIC Wiener 000001 through 67.  
 16 A Okay. That's Exhibit 2.  
 17 Q And we're looking at Page 6 of that.  
 18 A I think it would be easier if we refer to  
 19 it just by the Bates number.  
 20 Q Okay. Let's look at FGIC Wiener 000006.  
 21 A It's hard to read with the clips on,  
 22 that's all.  
 23 Q So why don't we put the clip on -- put the  
 24 clip on -- put it on the corner, so that way  
 25 you can flip it more easily.

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1 A I always take documents apart from clips.  
 2 Q I don't like taking documents apart at  
 3 depositions. I have to figure out what they  
 4 were.  
 5 A Well, that's why we have Bates numbers.  
 6 And what is the question?  
 7 Q Sure.  
 8 Is this an e-mail that you sent to  
 9 Mr. Peck on July 17, 2014?  
 10 A That is July 17, 2014, that is correct.  
 11 Q And you're asking Mr. Peck to comment on a  
 12 statement that Mr. Plummer made in his report;  
 13 is that right?  
 14 A That is correct.  
 15 Q And you write, "P.S. we had discussed  
 16 this"; is that right?  
 17 A That's correct.  
 18 Q What did you discuss with Mr. Peck prior  
 19 to this e-mail?  
 20 A Whether -- very briefly, we had discussed  
 21 the possibility of Mr. Peck responding in  
 22 writing to what Mr. Plummer stated on Page 40,  
 23 No. 67.  
 24 Q Why did you think that Mr. Peck would need  
 25 to respond to Mr. Plummer's statement before

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1 ever reading Mr. Plummer's report?  
 2 MR. PEREZ: Objection to the form of the  
 3 question. Assumes facts not in evidence.  
 4 A Who was reading what?  
 5 BY MR. ABEL:  
 6 Q Sure.  
 7 When was the discussion with Mr. Peck  
 8 regarding responding to Mr. Plummer's report?  
 9 A I believe probably on July 17th.  
 10 Q Was that before or after you received  
 11 Mr. Plummer's report?  
 12 A Definitely after.  
 13 Q So why did you discuss it with Mr. Peck  
 14 and then send him an e-mail asking him to  
 15 comment something you had already asked to  
 16 discuss, or that you had already discussed with  
 17 him?  
 18 MR. PEREZ: Object to the form of the  
 19 question.  
 20 A Simply it was a remainder.  
 21 BY MR. ABEL:  
 22 Q Let's look at Page 7 of Exhibit 2. It's  
 23 FGIC Wiener 000007.  
 24 Is this another e-mail that you sent to  
 25 Mr. Peck, this time on July 2, 2014?

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1 A That is correct.

2 Q And you wrote: "Just a reminder, send me  
3 contact information for the computer people;"  
4 is that right?

5 A That's correct.

6 Q Who are the "computer people"?

7 A Computer people outside of the group.

8 Q Who's side of the group?

9 A The side of the group is the firm, it's a  
10 financial firm, I believe, that provided the  
11 various analysis of the DIA data that we  
12 received in, shall we say, in accurate form.

13 Q We'll come back to that.

14 But how did you first become aware of this  
15 side of the group?

16 A I asked Mr. Peck if he could recommend  
17 someone who could decipher what I could not  
18 decipher from the DIA raw data that was sent to  
19 us.

20 Q Did you do any analysis of the background  
21 of this side of the group to see if they  
22 were -- if they had expertise in performing  
23 that type of analysis you're looking for?

24 A Well, I relied upon Mr. Peck's  
25 recommendation.

1 Q Did you ever do any kind of analysis to  
2 determine whether the Silar Group had the  
3 expertise sufficient to do the analysis you  
4 were looking for?

5 A Again, I relied on Mr. Peck's  
6 representation, which was then confirmed by the  
7 results.

8 Q But you don't know if the Silar Group's  
9 work on this case was accurate, do you?

10 A I presume that -- no way that I know that  
11 about any computer firms.

12 Q You didn't do any testing of the data  
13 provided by the Silar Group to make sure it was  
14 accurate?

15 A We did some -- we reviewed it, certainly.

16 Q Who was your contact person at the Silar  
17 Group?

18 A Rob Leeds.

19 Q Did you do any research on Rob Leeds to  
20 make sure that he had the expertise necessary  
21 to perform the work?

22 A I relied on Mr. Peck's recommendation.

23 Q And what analysis did you do of the Silar  
24 Group's results to confirm it was accurate?

25 A We looked at individual values

1 transcribed. We looked at percentages arrived  
2 at, and we reviewed, quite carefully,  
3 everything that Mr. Leeds provided to us.

4 Q Did you compare any of Mr. Leeds data that  
5 he provided to you to the original source data  
6 provided by the DIA?

7 A We did.

8 Q How large a sample did you compare?

9 A A fairly large sample, I can't give you an  
10 exact number.

11 Q Do you have any estimate?

12 A Estimate in terms of what?

13 Q Estimate in terms of the size of the  
14 sample.

15 A But are we talking about pages? Are we  
16 talking about objects?

17 Q Let's talk about objects.

18 A Okay.

19 Q What size of the sample -- estimate, did  
20 you compare Mr. Leeds' analysis to the original  
21 DIA sample?

22 A I think hundreds.

23 Q You think hundreds or you know hundreds?

24 A It's my opinion at this point it was  
25 hundreds.

1 Q Anything in your work file that would show  
2 what the sample size you compared between the  
3 DIA collection information and Mr. Leeds'  
4 information?

5 A No, we did it ad hoc in Mr. Leeds' office.

6 Q Let's look at Page 10 of Exhibit 2,  
7 FGIC -- Bates stamped FGIC Wiener 000010.

8 A Page?

9 Q Ten.

10 A Yes.

11 Q Second e-mail in this e-mail string, is  
12 that an e-mail from you to Mr. Peck dated  
13 May 21, 2014?

14 A It appears to be.

15 Q And do you see the paragraph that begins  
16 "By the end of the week"?

17 A That is correct.

18 Q Second sentence in there says, "There are  
19 so many aspects of the project which I guess we  
20 will be developing together, so I look forward  
21 to working closely with you."  
22 Did I read that correctly?

23 A Yes.

24 Q What aspects of the appraisal did you  
25 develop with ACG?

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<p style="text-align: right;">Page 62</p> <p>1 A The parameters of the job.</p> <p>2 Q Did you work determining your methodology</p> <p>3 with Mr. Peck?</p> <p>4 A Generally speaking, I worked with clients</p> <p>5 in determining methodology for fulfilling the</p> <p>6 needs of the assignment.</p> <p>7 Q Okay. That wasn't my question, though,</p> <p>8 sir. So I'm going to ask that you listen to my</p> <p>9 question and answer my question, not the</p> <p>10 question that you think I'm asking.</p> <p>11 My question for you was: Did you work</p> <p>12 closely with Mr. Peck in forming the</p> <p>13 methodology in this case?</p> <p>14 MR. PEREZ: Object to the form of the</p> <p>15 question.</p> <p>16 THE WITNESS: I can answer?</p> <p>17 MR. PEREZ: Yes.</p> <p>18 A I consulted with Mr. Peck.</p> <p>19 BY MR. ABEL:</p> <p>20 Q In your e-mail you said: "I look forward</p> <p>21 to working closely with you," right?</p> <p>22 A That's correct.</p> <p>23 Q Did you work closely with Mr. Peck in</p> <p>24 forming the methodology that you used in this</p> <p>25 case?</p>	<p style="text-align: right;">Page 64</p> <p>1 A Mr. Peck confirmed that my choice of using</p> <p>2 marketable cash value was correct and accurate,</p> <p>3 given the assignment.</p> <p>4 Q Did he have any other comments on your</p> <p>5 choice to use marketable cash value?</p> <p>6 A I think that's fairly sufficient.</p> <p>7 Q Did Mr. Peck ever tell you that in lending</p> <p>8 to -- against art collections, he utilized any</p> <p>9 other definition of value?</p> <p>10 A Is your question: Did Mr. Peck ever tell</p> <p>11 me that in lending to other institutions he,</p> <p>12 Mr. Peck, used other types of value?</p> <p>13 Q Yes.</p> <p>14 A Is that the question?</p> <p>15 The answer is no.</p> <p>16 Q Take a look at Page 17 of Exhibit 2.</p> <p>17 Are you there?</p> <p>18 A Give me one minute. I'm there.</p> <p>19 Q The middle of the page we have an e-mail</p> <p>20 from Mr. Peck to you dated June 6, 2014.</p> <p>21 Do you see that?</p> <p>22 A I do.</p> <p>23 Q You recall that e-mail?</p> <p>24 A I do.</p> <p>25 Q And am I correct that, at least according</p>
<p style="text-align: right;">Page 63</p> <p>1 A Not as closely as one would assume from</p> <p>2 reading that sentence.</p> <p>3 Q Well, how closely did you work with Mr.</p> <p>4 Peck in forming your methodology in this case?</p> <p>5 A I consulted with Mr. Peck.</p> <p>6 Q How frequently?</p> <p>7 A Not terribly frequently.</p> <p>8 Q On what aspects of your methodology did</p> <p>9 you consult with Mr. Peck?</p> <p>10 A The nature of the value, the fact that the</p> <p>11 DIA information was inadequate, how to resolve</p> <p>12 it, and things of that nature.</p> <p>13 Q When you say you worked with Mr. Peck on</p> <p>14 the nature of value, what do you mean by that?</p> <p>15 A Well, which would be the appropriate value</p> <p>16 to be applied, considering the assignment.</p> <p>17 Q And what did Mr. Peck suggest the</p> <p>18 appropriate value to be utilized would be?</p> <p>19 MR. PEREZ: Object to the form of the</p> <p>20 question.</p> <p>21 A Mr. Peck didn't suggest anything.</p> <p>22 BY MR. ABEL:</p> <p>23 Q Did Mr. Peck have any comments on the</p> <p>24 issue of what nature of value to utilize in</p> <p>25 this assignment?</p>	<p style="text-align: right;">Page 65</p> <p>1 to Mr. Peck, the images that you received from</p> <p>2 the DIA were good and the descriptions were</p> <p>3 relatively complete?</p> <p>4 MR. PEREZ: Object to the form of the</p> <p>5 question. Assumes facts not in evidence.</p> <p>6 BY MR. ABEL:</p> <p>7 Q Did you have any discussion with Mr. Peck</p> <p>8 regarding his statement in this e-mail that,</p> <p>9 "the images are good and the description's</p> <p>10 relatively complete"?</p> <p>11 A Only afterwards that I reviewed it.</p> <p>12 Q Was Mr. Peck wrong?</p> <p>13 A Yes. Well, partially wrong. I take it</p> <p>14 back.</p> <p>15 He said it is organized by genre. He was</p> <p>16 correct in that.</p> <p>17 Q He was wrong, though, that "the images</p> <p>18 were good and the descriptions were relatively</p> <p>19 complete"?</p> <p>20 A That's correct.</p> <p>21 Q Let's take a look at Page 20 of Exhibit 2.</p> <p>22 Is that an e-mail from -- sorry.</p> <p>23 In the middle of the page is an e-mail</p> <p>24 from Mr. Peck to you dated May 19, 2014?</p> <p>25 A It appears to be.</p>

<p style="text-align: right;">Page 66</p> <p>1 Q Do you recall that e-mail?</p> <p>2 A I do.</p> <p>3 Q In the second paragraph he writes: "I</p> <p>4 wanted to thank you for your help with the</p> <p>5 first matter."</p> <p>6 Do you know what "first matter" Mr. Peck</p> <p>7 was referring to in that e-mail?</p> <p>8 A I do.</p> <p>9 Q And what was that matter?</p> <p>10 A If my recollection serves me correctly,</p> <p>11 Mr. Peck was in litigation with Veronica Hurst,</p> <p>12 because apparently, he believed she defaulted</p> <p>13 on a loan that she had taken out from Art</p> <p>14 Capital Group. He needed, "he" being Mr. Peck,</p> <p>15 needed an expert opinion on whether her</p> <p>16 objections concerning valuation were</p> <p>17 well-founded or not.</p> <p>18 Q And how did you determine whether or not</p> <p>19 her objections were well-founded or not?</p> <p>20 A I conducted research and arrived at a</p> <p>21 conclusion.</p> <p>22 Q Did you perform an appraisal of the value</p> <p>23 of the Hurst collection?</p> <p>24 A No, I did not.</p> <p>25 Q Did you perform an appraisal of value of</p>	<p style="text-align: right;">Page 68</p> <p>1 sense that the oral appraisal I performed was</p> <p>2 not an appraisal report as defined by USPAP,</p> <p>3 but was a review appraisal.</p> <p>4 Q You were reviewing someone else's</p> <p>5 appraisal in that --</p> <p>6 A That is correct.</p> <p>7 Q -- opinion?</p> <p>8 Did you form your own opinion as to a</p> <p>9 value with regard to that Hurst collection?</p> <p>10 A In performing a review appraisal, I did</p> <p>11 form my own opinion as to the validity of a</p> <p>12 stated value.</p> <p>13 Q And you believe that it's not required</p> <p>14 under USPAP to have a written appraisal in that</p> <p>15 context?</p> <p>16 A USPAP doesn't give -- tell the appraiser</p> <p>17 what to do in a specific context. But in the</p> <p>18 context of review appraising, it is acceptable.</p> <p>19 Q Take a look at Page 30 of Exhibit 2.</p> <p>20 A Can we take a break?</p> <p>21 Q Sure.</p> <p>22 THE VIDEOGRAPHER: We'll go off the</p> <p>23 record. The time is 10:15.</p> <p>24 (Recess taken.)</p> <p>25 THE VIDEOGRAPHER: Go back on the record.</p>
<p style="text-align: right;">Page 67</p> <p>1 any portion of the collection at issue?</p> <p>2 A I retract that statement. I performed an</p> <p>3 oral appraisal.</p> <p>4 Q What's an oral appraisal?</p> <p>5 A An oral appraisal is exactly that. It's a</p> <p>6 statement on valuation that is arrived at after</p> <p>7 considerable research, that is transmitted to</p> <p>8 the client orally as opposed to being</p> <p>9 transmitted in written form.</p> <p>10 Q And does USPAP allow for oral appraisals?</p> <p>11 A Most certainly does.</p> <p>12 Q Do USPAP standards allow or oral</p> <p>13 appraisals or the AAA standards allow for oral</p> <p>14 appraisals?</p> <p>15 A I'm not familiar with the AAA standards at</p> <p>16 this point. I'm familiar, quite well, with</p> <p>17 USPAP standards, which take precedent.</p> <p>18 Q And what was the definition of value you</p> <p>19 used for that engagement?</p> <p>20 A The definition of value was marketable</p> <p>21 cash value.</p> <p>22 Q And how large was that collection that you</p> <p>23 valued?</p> <p>24 A If I recall, it was about 10 or 12</p> <p>25 objects. But I have to amend my answer in the</p>	<p style="text-align: right;">Page 69</p> <p>1 The time is 10:28, beginning of DVD No. 2.</p> <p>2 BY MR. ABEL:</p> <p>3 Q Mr. Wiener, if you can take a look at</p> <p>4 Page 30 of Exhibit 2. It's Bates-stamped FGIC</p> <p>5 Wiener 000030.</p> <p>6 Do you see that?</p> <p>7 A That is correct.</p> <p>8 Q This was a handwritten page; is that</p> <p>9 right?</p> <p>10 A It is.</p> <p>11 Q And whose handwriting is this?</p> <p>12 A Sarah Cox.</p> <p>13 Q If you look at the top of the page on the</p> <p>14 right-hand side it says, "DIA INS value equals</p> <p>15 150,000 at 1697"; is that right?</p> <p>16 A Yes.</p> <p>17 Q Do you know why Sarah Cox was</p> <p>18 indicating -- does that stand for, in your</p> <p>19 understanding, DIA insurance value?</p> <p>20 A I believe so.</p> <p>21 Q Do you know why she was including DIA</p> <p>22 insurance value information in her page?</p> <p>23 A No.</p> <p>24 Q Did you ever have any discussion with any</p> <p>25 of the other appraisers who worked on this</p>

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1 engagement as to whether or not they utilized  
 2 DIA insurance value in coming up with their  
 3 appraisals?  
 4 A I did not.  
 5 Q Do you know if they did?  
 6 A I don't. I don't know.  
 7 Q Do you know where Ms. Cox would have  
 8 obtained information on DIA insurance value  
 9 from?  
 10 A Presumably from the information that was  
 11 sent to her.  
 12 Q What information was sent to her?  
 13 A I believe she was sent all the other  
 14 valuation figures, but I can't tell you  
 15 precisely.  
 16 Q And where did you obtain DIA insurance  
 17 value information from?  
 18 A It was part of the document production  
 19 that came from your client, I believe.  
 20 Q On the screen up in front of you is a  
 21 native format document that was produced in  
 22 this action as DIA INSP124564.  
 23 You see what I'm referring to?  
 24 A I do.  
 25 Q Is this the document that you believe

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1 contains insurance value information from the  
 2 DIA?  
 3 A I really don't know what was sent to  
 4 Sarah Cox. I told the people who work for me  
 5 to send all relevant information, but I didn't  
 6 supervise each one.  
 7 Q Well, did you ever look at this document  
 8 before?  
 9 A I did.  
 10 Q And is this the information you believe  
 11 contains insurance value information from the  
 12 DIA?  
 13 A You would have to scroll to the left of  
 14 the Excel form.  
 15 Q You mean look at the sort number, this  
 16 one?  
 17 Does that help you?  
 18 A Unless it specifically states insurance  
 19 value, I don't know.  
 20 Q Well, did you ever see a document produced  
 21 in this action that said "Insurance Value" as  
 22 opposed to just "value"?  
 23 A I can't recall -- I believe I have, but I  
 24 can't recall precisely.  
 25 Q Would that be in your work file?

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1 A That's part of the native information.  
 2 Q Is there --  
 3 A Electronically, we have it.  
 4 Q Are you confident that the document that  
 5 you relied upon indicated that it was for  
 6 insurance value?  
 7 A I don't -- as I say, I don't know exactly  
 8 what was sent to Sarah Cox by my staff.  
 9 Q I'm not asking what was sent to Sarah Cox.  
 10 I'm asking you.  
 11 You said that you relied on a chart  
 12 showing insurance values; is that right?  
 13 A I believe so, yes.  
 14 Q And how did you know it was for insurance  
 15 value?  
 16 A Because it was represented as such.  
 17 Q Represented as such by whom?  
 18 A By, I believe, you. By your client, that  
 19 these were labeled insurance values.  
 20 Q The document you saw had information  
 21 labeled "Insurance Values"?  
 22 A I believe so, but I can't be 100 percent  
 23 precise because I didn't focus on the exact  
 24 title.  
 25 Q Well, isn't it important to determine

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1 whether or not the information you're relying  
 2 upon is insurance value versus fair market  
 3 value versus marketable cash value?  
 4 A It may. It was represented to us that  
 5 these values were for insurance purpose.  
 6 Whether the document itself said insurance  
 7 value or just value, I can't recall precisely,  
 8 but it was clearly my understanding that the  
 9 values given were for insurance purposes.  
 10 Q And who at the DIA represented to you that  
 11 the values that you're relying upon were  
 12 insurance values?  
 13 A It came from counsel.  
 14 Q If counsel was wrong, would that make your  
 15 analysis wrong?  
 16 A Depends upon what the values were.  
 17 Q Well, if the value in the insurance value  
 18 list that you're referring to is not insurance  
 19 value --  
 20 A Then --  
 21 Q -- it was arbitrary value, would that make  
 22 your analysis wrong?  
 23 A I don't know what "arbitrary value" means.  
 24 Q Well, if there is no standard of value,  
 25 insurance value, liquidation value, marketable

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1 cash value, the values input in that list were  
 2 just values, as you said, pulled out of the air  
 3 by third parties, would that have any impact on  
 4 your valuation?  
 5 MR. PEREZ: Object to the form of the  
 6 question. Assumes facts not in evidence.  
 7 A I take into consideration all valuation,  
 8 and I assess the validity, the source, the  
 9 place in the market. So it's definitely  
 10 something I would consider.  
 11 BY MR. ABEL:  
 12 Q So how did you take into account the  
 13 validity of the -- what you call the insurance  
 14 value chart in forming your opinion in this  
 15 case?  
 16 A I -- we definitely reviewed values that  
 17 were given, which we believe, for insurance  
 18 purposes, with the other values applied by the  
 19 other appraisers and with comparables we  
 20 selected in forming our valuation conclusion on  
 21 an object-by-object basis.  
 22 Q And in that comparison, did you make any  
 23 determination as to whether or not the  
 24 information in this insurance value chart that  
 25 you relied upon was accurate?

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1 A Accurate in what sense?  
 2 Q That the values indicated on the chart  
 3 were accurate.  
 4 MR. PEREZ: Object to the form of the  
 5 question.  
 6 A I believe I made the conclusion that the  
 7 values were most likely accurately transcribed,  
 8 and they were represented as being insurance  
 9 values from the DIA.  
 10 BY MR. ABEL:  
 11 Q Did you do anything to confirm whether the  
 12 values on that list actually corresponded to  
 13 the insurance values for the artwork in  
 14 question?  
 15 A I'm not sure I understand the question.  
 16 Q Sure.  
 17 Did you know the source of the values on  
 18 that chart that you're referring to?  
 19 A I was told by counsel that it came from  
 20 the DIA.  
 21 Q Do you know who at the DIA it came from?  
 22 A I do not.  
 23 Q Does that matter to you, what the source  
 24 was for the piece of data?  
 25 A It's data that came from the DIA, simple

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1 as all that.  
 2 Q So hypothetically speaking, if a clerk at  
 3 the DIA were to enter random numbers into the  
 4 DIA chart, would that have the same  
 5 credibility, in your mind, as if it came from a  
 6 curator?  
 7 A I take every piece of data into  
 8 consideration and look at it in relation to the  
 9 market at the time.  
 10 Q And do you assume that all data utilized  
 11 is equal in its accuracy?  
 12 A Again, we're going back to the term  
 13 "accuracy."  
 14 I assume that it's accurately transcribed.  
 15 Q What do you mean "accurately transcribed"?  
 16 Transcribed from what?  
 17 A Transcribed from rough notes, from verbal  
 18 assessments.  
 19 Q So you assume that there is some basis for  
 20 the underlying data that you're relying upon,  
 21 other than that it was just invented whole  
 22 cloth?  
 23 A I didn't say that. I say that I take  
 24 every individual piece of data into  
 25 consideration.

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1 Q So how do you test that data that you're  
 2 relying upon to confirm that it's accurate?  
 3 A I review the comparables at the time. I  
 4 rely upon mine and other experts' knowledge at  
 5 the time of -- the market at the time it was  
 6 written, and make some determination of what  
 7 part, what the element of credibility -- I take  
 8 the word back, "credibility." The element of  
 9 correct assessment that data had in relation to  
 10 our own determinations.  
 11 Q And what did you do in this case to  
 12 determine that the information on the insurance  
 13 value charts that you're referring to earlier  
 14 were correct?  
 15 A We reviewed them in context of what we  
 16 knew of the market at the time these values  
 17 were dated.  
 18 Q How many items were on that insurance  
 19 value chart?  
 20 A I believe 17,000.  
 21 Q Did you look at the entire chart?  
 22 A We did.  
 23 Q Am I correct that there is actually 60,228  
 24 items on the insurance value chart that you  
 25 reviewed?

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1 A Well, no.  
 2 I mean, the answer -- is are you referring  
 3 to values or are you referring to --  
 4 Q I'm asking about objects.  
 5 Am I correct there were 60,228 objects  
 6 listed on the insurance value chart you  
 7 reviewed?  
 8 MR. PEREZ: Object to the form of the  
 9 question. Assumes facts not in evidence.  
 10 THE WITNESS: I can answer?  
 11 MR. PEREZ: Yeah.  
 12 A The -- I believe --  
 13 BY MR. ABEL:  
 14 Q You didn't look through the 60,228 objects  
 15 listed on the chart to confirm that the values  
 16 for each one of those objects, to the extent it  
 17 was listed, was correct, did you?  
 18 A Again, I take issue with the word  
 19 "correct."  
 20 So in answer to your question, we reviewed  
 21 a selection of values on that chart.  
 22 Q How large a sample did you review to  
 23 confirm that the values listed on the alleged  
 24 insurance value chart was correct?  
 25 A Again, I didn't -- the question is

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1 correct. I take issue with the word "correct."  
 2 Q Okay. Let's use the word "accurate."  
 3 Do you understand what the word "accurate"  
 4 means?  
 5 A Of course I understand what the word  
 6 "accurate" means.  
 7 Q So what sample size did you review from  
 8 the insurance, alleged insurance value chart to  
 9 confirm that the values indicated on that chart  
 10 were accurate?  
 11 MR. PEREZ: Object to the form of the  
 12 question. Assumes facts not in evidence.  
 13 A We reviewed close to 400 objects, and  
 14 again, I don't know if I'd use the word  
 15 "accurate," to see whether they corresponded  
 16 with our opinion.  
 17 Accuracy is an arbitrary word.  
 18 BY MR. ABEL:  
 19 Q And did those 400 objects from the DIA  
 20 alleged insurance value list correspond with  
 21 your valuations?  
 22 MR. PEREZ: Objection to the form of the  
 23 question. Assumes facts not in evidence.  
 24 A Some we agreed with; some we did not.  
 25

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1 BY MR. ABEL:  
 2 Q And what was the error rate between the  
 3 information on the alleged DIA insurance value  
 4 list and your independent appraisals?  
 5 MR. PEREZ: Object. Same objection.  
 6 A I didn't calculate an error rate. And I  
 7 wouldn't use an "error rate," I don't think, is  
 8 the proper term.  
 9 I didn't calculate how closely the object  
 10 was in relation to our valuation, the valuation  
 11 given at that time.  
 12 Q Of the 400 items that you analyzed from  
 13 the DIA alleged insurance value chart, how many  
 14 of those corresponded with the value that you  
 15 determined independently?  
 16 A Considering that they were presumably, and  
 17 I don't know for sure because it wasn't labeled  
 18 as such, retail replacement value from a period  
 19 of 9 to 15 years ago, I would estimate maybe  
 20 50 percent, maybe more, were comprehensible or  
 21 understandable within that framework.  
 22 Q So 50 percent, approximately, of the items  
 23 in the DIA alleged insurance value list did not  
 24 correspond with the values that you determined  
 25 through your independent analysis?

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1 A They needed -- possibly needed some  
 2 adjustments, in our review.  
 3 Q What adjustments?  
 4 A Some were, we thought, a little bit too  
 5 high for the time; some we thought were a  
 6 little bit too low for the time.  
 7 Q Did you make a determination that the  
 8 information on that alleged insurance value  
 9 chart was actually accurate for the period in  
 10 which it was presented on the chart?  
 11 A Again, the answer is, it was determined on  
 12 a case-by-case basis.  
 13 Q Did you make any adjustments to the  
 14 information on the alleged DIA insurance value  
 15 chart to take into account that case-by-case  
 16 basis determination?  
 17 A We reviewed that information in context  
 18 with other values supplied.  
 19 Q Did you do that in Step 3 of your  
 20 methodology?  
 21 A Did we do what in Step 3 of the  
 22 methodology.  
 23 Q Make adjustments to the alleged DIA  
 24 insurance value charts, value information, with  
 25 regard to Step 3 of your analysis?

<p style="text-align: right;">Page 82</p> <p>1 A We made adjustments within Step 3.</p> <p>2 Q Did you make adjustments other than</p> <p>3 applying an appreciation rate to the</p> <p>4 information provided in the alleged DIA</p> <p>5 insurance chart?</p> <p>6 A Again, I answered that before.</p> <p>7 The adjustments were implicit in the fact</p> <p>8 that we used marketable cash value in Step 3,</p> <p>9 is part of the appreciation rate as opposed to</p> <p>10 retail replacement value, if indeed that was</p> <p>11 the value used by the DIA.</p> <p>12 Q Other than applying a 64.6 percent</p> <p>13 appreciation rate, as detailed on Page 3 of</p> <p>14 your report, did you apply any other discounts</p> <p>15 or supplements or other adjustments to the</p> <p>16 information from the alleged DIA insurance</p> <p>17 chart?</p> <p>18 MR. PEREZ: Object to the question. Asked</p> <p>19 and answered.</p> <p>20 A Is your question: Did we take individual</p> <p>21 values at that time and adjust each individual</p> <p>22 value given by the DIA to our assessment?</p> <p>23 BY MR. ABEL:</p> <p>24 Q No.</p> <p>25 My question for you is, you took 16 -- let</p>	<p style="text-align: right;">Page 84</p> <p>1 A And now we're looking at Page 2.</p> <p>2 Are we all there?</p> <p>3 Q Yes.</p> <p>4 A You'll see there's a total of 387 objects</p> <p>5 that was part of our sampling, of which 70 did</p> <p>6 not have any DIA insurance value or what we</p> <p>7 presume to be DIA insurance value. We have a</p> <p>8 total. We average weight of age, and then you</p> <p>9 see average value of VWA. That average value</p> <p>10 is defined in the report as marketable cash</p> <p>11 value.</p> <p>12 So as I've said earlier, the adjustment</p> <p>13 was implicit in bringing the 2,000,166,000</p> <p>14 objects up to marketable cash value, which</p> <p>15 would -- which was 3,000,566,000 and so on. I</p> <p>16 forget -- I'm sorry, 3,566,000,000.</p> <p>17 Q You compared what you believed to be</p> <p>18 insurance value to marketable cash value in</p> <p>19 that chart; is that right?</p> <p>20 A We projected. I wouldn't say "compared."</p> <p>21 We projected.</p> <p>22 Q Well, let's discuss the columns.</p> <p>23 The column marked "DIA Insurance Value" is</p> <p>24 the value taken from the alleged DIA insurance</p> <p>25 chart, correct?</p>
<p style="text-align: right;">Page 83</p> <p>1 me -- correct me if I'm wrong.</p> <p>2 You took 16,378 items from the DIA</p> <p>3 insurance value chart, that you're identifying</p> <p>4 as such, and you took the valuation information</p> <p>5 from that chart and then applied a 64.6 percent</p> <p>6 appreciation factor to that amount to achieve</p> <p>7 your projected value; is that right?</p> <p>8 A Partially.</p> <p>9 Q What am I missing?</p> <p>10 A In relation to marketable cash value.</p> <p>11 Q And how did you determine marketable cash</p> <p>12 value in that context?</p> <p>13 A By -- I think it's pretty clear on the</p> <p>14 attachment that goes with Step 3. And let me</p> <p>15 find it.</p> <p>16 If you look at -- again, it would be</p> <p>17 easier if these had Bates numbers on them. But</p> <p>18 if you look at Page 2, which is in the</p> <p>19 attachment explaining Step 3.</p> <p>20 Q You're looking at Attachment L of</p> <p>21 Exhibit 3?</p> <p>22 A No. Let me just check and make sure we're</p> <p>23 talking about the same thing.</p> <p>24 Yes.</p> <p>25 Q Okay.</p>	<p style="text-align: right;">Page 85</p> <p>1 A That's correct.</p> <p>2 Q And the column marked "VWA's Average</p> <p>3 Value," that is the value information that you</p> <p>4 independently came up with in your analysis;</p> <p>5 isn't that right?</p> <p>6 A For 387 objects.</p> <p>7 Q For 387 objects; is that right?</p> <p>8 A Correct.</p> <p>9 Q So you're comparing what you believe to be</p> <p>10 DIA insurance valuation to your market value --</p> <p>11 marketable cash value information?</p> <p>12 A That is correct.</p> <p>13 Q And you say because you compared those two</p> <p>14 items and determined a 10.9 percent annual</p> <p>15 increase, that somehow the discount to</p> <p>16 determine marketable cash value is baked into</p> <p>17 that analysis?</p> <p>18 A I don't think I used the word baked in.</p> <p>19 Q You said implicit?</p> <p>20 A Implicit, yes.</p> <p>21 Q How is it implicit in that analysis?</p> <p>22 A Well, if you're adjusting a valuation that</p> <p>23 by definition, presumably, is considerably</p> <p>24 higher than the one we used, and when</p> <p>25 contrasting it and bringing it up to current</p>

<p style="text-align: right;">Page 86</p> <p>1 valuation standards, you would be -- the                  2 adjustment is now in marketable cash value                  3 terms.                  4 In other words, if we had used retail                  5 replacement value the average value of VWA in                  6 current terms would be considerably higher than                  7 3,000,566,000, so we have now brought the                  8 value, presumably retail replacement value, we                  9 don't know for sure, on the DIA insurance,                  10 that's why we called it insurance values, into                  11 marketable cash value terms.                  12 I think that's pretty clear and pretty --                  13 and the implicit factor that I've -- I'm                  14 referring to is clear as well.                  15 Q And the factor that you utilized to                  16 convert it the DIA insurance value into what                  17 you believe to be the present marketable cash                  18 value is 10.9 percent?                  19 A The annual, it's labeled annualized                  20 percentage increase.                  21 Q So how did you get from 10.9 percent in                  22 that chart to your ultimate conclusion of the                  23 marketable cash value of the 16,378 objects in                  24 the DIA collection that you valued for Step 3?                  25 A If you look at Step 3 on Page 3 of the</p>	<p style="text-align: right;">Page 88</p> <p>1 Q But you didn't think it was necessary or                  2 sufficient to specifically detail that what you                  3 were doing in your analysis was taking                  4 insurance value information and applying a                  5 conversion factor to marketable cash value?                  6 A I don't believe we stated it explicitly                  7 but I will defer answering totally unless we                  8 look at steps is taken.                  9 Q Sure. We'll come back to that.                  10 Is there a percentage factor that you                  11 usually apply to insurance value to determine                  12 marketable cash value?                  13 A Are you asking me whether there's a                  14 standard insurance factor that one applies?                  15 Q Is there any standard factor of percentage                  16 utilized in your profession in order to convert                  17 an insurance value to a marketable cash value?                  18 A No.                  19 Q Is there any standard utilized in your                  20 profession to convert a fair market value to a                  21 marketable cash value?                  22 A Again, it's a case by case basis.                  23 Q So for example, you can't simply say you                  24 take 60 percent of marketable cash or                  25 marketable -- sorry. Strike that.</p>
<p style="text-align: right;">Page 87</p> <p>1 report, you see that there was a -- they are                  2 using that on an annualized basis, there's a                  3 percentage of appreciation of 64.6 percent.                  4 That was all done by computers and people who                  5 do it.                  6 Q How did you get to 64.6 percent from the                  7 annualized percent of 10.9 percent?                  8 A Taking the years that these values were                  9 done I think there's another chart about that                  10 but taking the years it was done it came to a                  11 percentage of appreciation for the time period                  12 in question of 64.6 percent.                  13 Q And the 64.6 percent referred to there                  14 isn't is it true just a market appreciation                  15 rate you're saying it also included a                  16 collection to take into account from the change                  17 from insurance value to do marketable cash                  18 value?                  19 A That is correct.                  20 Q Why didn't you include that in your                  21 report?                  22 A I think it is in my report.                  23 Q Do you see that anywhere in your report?                  24 A Possibly, not, but I think it's understood                  25 and implicit when one looks at the charts.</p>	<p style="text-align: right;">Page 89</p> <p>1 Is it inappropriate to say, for example,                  2 you take 60 percent of fair market value to                  3 determine the marketable cash value of items of                  4 art?                  5 A It's inappropriate.                  6 Q Let's look at Page 35 of Exhibit 2.                  7 And, again, this was from the work file of                  8 one of your appraisers.                  9 A You said Page 35?                  10 Q Thirty-five, yeah.                  11 A Yes, I'm on Page 35.                  12 Q And this is from the work file of one of                  13 your appraisers?                  14 A That's correct.                  15 Q If you look at the last item on the page                  16 the middle of the page. It says "Artvest                  17 equals FMV" -- so two squiggly lines,                  18 "60 percent equals MCV."                  19 Do you see that?                  20 A I'm sorry. Oh, yes.                  21 Q Do you understand that to mean that she                  22 determined marketable cash value by taking                  23 60 percent -- a percentage of fair market                  24 value?                  25 A For those items listed on the page, I do.</p>

<p style="text-align: right;">Page 90</p> <p>1 Q And you said that that was not 2 appropriate? 3 MR. PEREZ: Object the form of the 4 question. Assumes facts not in evidence. 5 BY MR. ABEL: 6 Q Well, you just testified it was not 7 appropriate to apply 60 percent, percentage 8 factor to transfer or to convert fair market 9 value to marketable cash value, you did not? 10 A That's not what I testified. 11 Q Well, the transcript will speak for 12 itself. 13 Did you understand that what she was doing 14 was converting fair market value to marketable 15 cash values in a 60 percent percentage factor? 16 A In that particular case, I believe so. 17 Q Did you ever ask her in how many of her 18 cases she converted fair market value to 19 marketable cash value simply by utilizing a 20 60 percent percentage factor? 21 A We review each value on a case-by-case 22 basis. 23 Q And do you recall discussing during that 24 case-by-case evaluation how many times she 25 converted fair market value to marketable cash</p>	<p style="text-align: right;">Page 92</p> <p>1 testified, they are not formulaic. 2 Q Am I correct that VWA independently valued 3 387 works of art in the DIA project? 4 A That is correct. 5 Q How may of those works of art did you 6 value? 7 A I reviewed practically everything. 8 Q I'm not asking how you did you review. 9 How many did you value as an initial 10 matter? 11 A Well, again, the valuation determined by 12 VWA, as stated in the report very clearly, is 13 done in committee. So the final valuations, I 14 participated in practically every single 15 valuation. 16 Q Do you know, for each one of those 387 17 value -- 387 items, what percentage was applied 18 to convert from fair market value to marketable 19 cash value? 20 A As a general percentage, is that the 21 question? 22 Q Do you know for any of the items what 23 percentage was used? 24 A It was a case-by-case basis. I didn't 25 calculate a percentage. We came up with a</p>
<p style="text-align: right;">Page 91</p> <p>1 value by applying a 60 percent factor? 2 A I don't recall. 3 Q Let's look at Page 38. 4 Am I correct that this appraiser also did 5 the exact same thing with regard to preparing a 6 Christie's fair market value to marketable cash 7 value with regard to an Egyptian Blackstone 8 portrait? 9 A That is correct. 10 Q And if you flip the page, she did it again 11 with regard to an Egyptian Ptolemaic Blackstone 12 head? 13 A On what page are you referring? 14 Q Page 39. 15 A That's correct. 16 Q If you flip to Page 41, she did it yet 17 again with regard an Artvest appraisal of a 18 Mesopotamia Limestone release? 19 A That is correct. 20 Q Do you know how many of your other 21 appraisers did similar conversions? 22 A I don't know. The instructions to the 23 appraisers we used were to use marketable cash 24 value. And as I say, these things are 25 determined on a case-by-case basis. And as I</p>	<p style="text-align: right;">Page 93</p> <p>1 final number for each item. 2 Q And in coming up with that final number 3 for each item, did you ask the person who did 4 the initial valuation what percentage factor, 5 what factor they utilized in converting from 6 fair market value to marketable cash value? 7 A We spoke about each individual value 8 individually. 9 Implicit in the valuation was a potential 10 discount factor, and we discussed it with them 11 whether we thought it was tenable or not. 12 Q Did you ask them what discount factor they 13 utilized for each of the 387 works? 14 A We reviewed the results. 15 Q Did you ask them what discount factor they 16 applied for each of the 387 results? 17 A Not explicitly. 18 Q Am I correct that USPAP requires you 19 identify the intended use of your opinions and 20 conclusions in an appraisal? 21 A They -- not explicitly. It requires you 22 to identify intended users. 23 Q Are you sure about that, sir? 24 A I'm not 100 -- without USPAP in front of 25 me, I can't answer that definitively.</p>



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1 Q Isn't it a fundamental precept of USPAP  
 2 that in an appraisal you're supposed to  
 3 identify the intended use of your opinions and  
 4 conclusions?  
 5 A That is correct.  
 6 Q And USPAP also requires you to identify  
 7 your client and other intended users for an  
 8 appraisal?  
 9 A That is correct.  
 10 Q Why is that?  
 11 A So that your appraisal report does not get  
 12 misused.  
 13 Q How can your appraisal report get misused  
 14 if it's used by someone other than your client  
 15 or an intended user?  
 16 A Simply.  
 17 The -- I can't give you specific agendas,  
 18 but frequently it happens that appraisal  
 19 reports are being misused. That they are  
 20 disseminated to third parties that are not  
 21 intended to have the report.  
 22 Q And in your opinion, how does that create  
 23 a problem?  
 24 A Well, if an appraiser -- if an unintended  
 25 user were to take an appraisal report for which

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1 that user was not intended and use it for a  
 2 purpose for which the report was not intended  
 3 to be used, such as taking an insurance report  
 4 and then representing it as being comparable  
 5 with fair market value, for example, that would  
 6 be an -- that would be a misuse of the report,  
 7 and the report is only to be used by intended  
 8 users.  
 9 Q And why is it your understanding that  
 10 USPAP requires you to identify the intended use  
 11 of your opinions and conclusions?  
 12 A So that the report does not get misused.  
 13 Q What's the definition of an "intended  
 14 user" under USPAP, to your knowledge?  
 15 A One who is identified by the appraiser, by  
 16 name or by generic type as an appropriate user  
 17 of the report within the context of the  
 18 appraisal assignment.  
 19 Q And under USPAP is the intended user  
 20 required to be identified in the appraisal  
 21 report itself?  
 22 A Either by -- the intended user is required  
 23 to be identified either by generic type or by  
 24 name.  
 25 Q Who is the client on your engagement that

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1 you're testifying regarding here?  
 2 A Weil.  
 3 Q Any other client for that engagement?  
 4 A No.  
 5 Q Was ACG a client for your engagement in  
 6 this case?  
 7 A No.  
 8 Q Was ACG ever your client for your  
 9 engagement in this case?  
 10 A I did not sign an engagement letter with  
 11 ACG.  
 12 Q Who are the intend users for your  
 13 appraisal in this case?  
 14 A Weil and ACG, for the purposes of  
 15 obtaining a loan, and possibly those connected  
 16 with ACG for that purpose.  
 17 Q Is the Court an intended user of your  
 18 appraisal?  
 19 A I believe so.  
 20 Q Did you disclose the Courts, generically  
 21 or directly, as an intended user of your  
 22 appraisal in this case?  
 23 A I think it's implicit in the reports that  
 24 we were engaged by Weil for the purpose of  
 25 bankruptcy court proceedings.

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1 Q Does USPAP allow you to implicitly  
 2 identify intended users of your report?  
 3 A USPAP gives the appraiser considerable  
 4 latitude and it's decided on a case-by-case  
 5 basis.  
 6 Q It's your understanding that USPAP gives  
 7 you considerable latitude to determine who  
 8 the -- to disclose -- in determining how  
 9 accurately to disclose the intended user of  
 10 your appraisal report?  
 11 A That is what I said.  
 12 (Deposition Exhibit 4, 2014-2015 USPAP  
 13 Standards, marked for identification as of this  
 14 date.)  
 15 THE WITNESS: Can I just refill my tea cup  
 16 for a minute?  
 17 MR. ABEL: Take a quick break?  
 18 THE WITNESS: Yeah, two seconds.  
 19 THE VIDEOGRAPHER: You're taking a break?  
 20 THE WITNESS: We can just take a full  
 21 break if you want to.  
 22 (Discussion off the record.)  
 23 MR. ABEL: Let's go off the record for a  
 24 minute.  
 25 THE VIDEOGRAPHER: We're off the record.

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<p style="text-align: right;">Page 98</p> <p>1 The time is 11:05.                  2 (Recess taken.)                  3 THE VIDEOGRAPHER: Go back on the record.                  4 The time is 11:06.                  5 BY MR. ABEL:                  6 Q So I'm showing you a copy -- so I'm                  7 showing you a document that's been marked                  8 Deposition Exhibit 4.                  9 A Thank you.                  10 Q Without reading through the entire thing,                  11 does that appear to be the 2014 to 2015 USPAP                  12 standards?                  13 A It is.                  14 Q You ever heard of term "prospective                  15 appraisal" before?                  16 A Prospective appraisal?                  17 Q Prospective appraisal.                  18 A Yes.                  19 Q And what is a prospective appraisal?                  20 A One in which the appraiser gives a, what                  21 shall we say, a determination of value at a                  22 future date.                  23 Q And what's the difference between a                  24 current appraisal and a prospective appraisal?                  25 A Current appraisal is determined as of the</p>	<p style="text-align: right;">Page 100</p> <p>1 A I thought that it would be terrible if it                  2 were to be sold.                  3 Q Why?                  4 A Because I believe the collection is                  5 spectacular in terms of quality of objects. I                  6 believe it has an integral part in the cultural                  7 history of Detroit. I believe it could be part                  8 of cultural tourism, which may help rejuvenate                  9 a municipal economy that is in bankruptcy.                  10 And those are the reasons.                  11 Q Any other reasons?                  12 A Those are the main ones, I think.                  13 Q When were you first contacted with regard                  14 to providing services with regard to the                  15 valuation of the DIA collection?                  16 A In the middle of May of this year.                  17 Q And were you contacted by Ian Peck of ACG                  18 in May for that purpose?                  19 A I was.                  20 Q And was that the first time, in May of                  21 2014, that you spoke with Mr. Peck about                  22 valuing the DIA collection?                  23 A That is correct.                  24 Q Where did your May 2014 discussion with                  25 Mr. Peck take place?</p>
<p style="text-align: right;">Page 99</p> <p>1 date on which the appraisal is being written.                  2 Prospective appraisal is projected values                  3 at some point in the future, as identified                  4 within the appraisal report.                  5 Q And did you perform a current appraisal or                  6 a prospective appraisal for this engagement?                  7 A We performed a current appraisal.                  8 Q When did you first hear about the DIA                  9 collection may be at issue in the Detroit                  10 bankruptcy?                  11 A There were numerous stories in the press                  12 long before I was approached to be become                  13 engaged in one way or another.                  14 Q Do you recall when you first heard about                  15 that?                  16 A I can't tell you the exact date. I                  17 suppose in the first part of 2004, but maybe                  18 before.                  19 Q Did you ever hear about the possibility                  20 that the DIA collection could be sold in                  21 conjunction with the bankruptcy?                  22 A I believe press reports mentioned that.                  23 Q And what did you think about the                  24 possibility that the DIA collection could be                  25 sold?</p>	<p style="text-align: right;">Page 101</p> <p>1 A It took place on the telephone. I was in                  2 California at the time.                  3 Q Did he call you?                  4 Did you call him?                  5 A I received an e-mail from Mr. Peck asking                  6 me to set up a time when we could talk on the                  7 phone about a matter that he was considering                  8 engaging my services with.                  9 Q Did Mr. Peck or ACG engage your services                  10 on an appraisal of the DIA collection?                  11 A Mr. Peck asked me to submit a proposal.                  12 And Mr. Peck indicated at a certain point, I                  13 can't recall exactly when, that indeed he would                  14 be very interested in retaining our services.                  15 Q Did ACG commit to retain the services of                  16 VWA for that appraisal?                  17 A Without a formal letter of retention,                  18 there could never be a commitment.                  19 But it was my understanding that a formal                  20 letter of retention would be following from                  21 Mr. Peck.                  22 Q Did he ever send you one?                  23 A He sent me -- well, asked me to submit my                  24 standard letter of retention in draft form. He                  25 then -- then his attorney put some suggestions</p>

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<p style="text-align: right;">Page 102</p> <p>1 in. My attorney reviewed it. And there was a                  2 certain amount of back and forth.                  3 <b>Q Was it ever signed?</b>                  4 A No.                  5 <b>Q Why not?</b>                  6 A Because at a certain point Mr. Peck                  7 informed me that Weil would be the one who                  8 would be retaining me.                  9 <b>Q And were you ultimately retained by Weil?</b>                  10 A I was.                  11 <b>Q When was that?</b>                  12 A The letter of retention, to the best of my                  13 recollection, was signed on July 11, 2014.                  14 <b>Q And between May of 2014, when you were</b>                  15 <b>initially contacted by Mr. Peck, and July 11th</b>                  16 <b>of 2014, when you were retained by Weil, did</b>                  17 <b>you perform any work on the engagement to value</b>                  18 <b>the DIA collection?</b>                  19 A Only preliminary reviews of data sent to                  20 me for review.                  21 <b>Q What do you mean by that?</b>                  22 A What is your -- I don't understand your                  23 question.                  24 What do you mean by that?                  25 <b>Q You said you only performed preliminary</b></p>	<p style="text-align: right;">Page 104</p> <p>1 A That my conclusions, after the preliminary                  2 review of Houlihan Lokey, was that the DIA                  3 collection was indeed imperilled, that there                  4 were various options to monetize the collection                  5 and make the creditors whole, I believed, and                  6 that for these purposes an appraisal report                  7 would be required.                  8 <b>Q And what did you do with regard, if</b>                  9 <b>anything, with regard to the data sheets</b>                  10 <b>obtained from the DIA prior to July 11, 2014?</b>                  11 A Prior to July 11th, is that what you said?                  12 <b>Q Yes.</b>                  13 A We reviewed them. We got them                  14 electronically. And I then informed Mr. Peck                  15 that, contrary to what he imagined in the                  16 beginning, that they were not adequate, in the                  17 sense that the most -- for two reasons or three                  18 reasons, some of which we compensated for                  19 later.                  20 But mostly that the author or the artist                  21 involved in a particular object, the crafts                  22 person in some objects was not correctly                  23 identified in these data sheets.                  24 <b>Q Could you rely on information that you</b>                  25 <b>knew was incorrect?</b></p>
<p style="text-align: right;">Page 103</p> <p>1 <b>reviews of data sent to you. Let's break it</b>                  2 <b>down.</b>                  3 <b>Who sent you the data?</b>                  4 A I was -- all data that I received was sent                  5 to me at that point by Mr. Peck.                  6 <b>Q And what data did he send you?</b>                  7 A He sent -- to the best of my recollection,                  8 he sent me the Houlihan Lokey report, with                  9 attachments, or exhibits, I think they called                  10 it, and also data sheets that he obtained from                  11 the DIA.                  12 <b>Q And what did you do with the Houlihan</b>                  13 <b>Lokey report, if anything?</b>                  14 A I read it.                  15 <b>Q Did you form any preliminary analysis of</b>                  16 <b>that report or the data in there?</b>                  17 A I -- what do you mean by "analysis"?                  18 <b>Q Well, did you -- were you looking for</b>                  19 <b>anything specific in the Houlihan Lokey report?</b>                  20 A I was looking to see what it said.                  21 <b>Q And did you draw any conclusions or form</b>                  22 <b>any opinions from that review?</b>                  23 A Only in a very summary and preliminary                  24 way.                  25 <b>Q And what were those opinions you drew?</b></p>	<p style="text-align: right;">Page 105</p> <p>1 MR. PEREZ: Object to the form of the                  2 question. Assumes facts not in evidence.                  3 BY MR. ABEL:                  4 <b>Q You can answer.</b>                  5 A I felt that in order to rely on the                  6 information, part of it which could be relied                  7 upon, and part of it which could not be relied                  8 upon, we would need correction.                  9 <b>Q So you believe that you couldn't rely upon</b>                  10 <b>the information that you knew was incorrect?</b>                  11 A Not totally, the way it was written up in                  12 the data that we received.                  13 <b>Q Have you ever, in an engagement, relied</b>                  14 <b>upon information that you knew was incorrect?</b>                  15 A I relied on -- never. I take that back.                  16 I -- again, there is a, what shall we say,                  17 a difference that I know of between the legal                  18 definition of relying and the appraisal                  19 definition of relying, which is -- which would                  20 mean, in appraisal sense, it would be                  21 determinative, in a legal sense, taking it                  22 under consideration. I take all data under                  23 consideration, whether it's -- whether I                  24 consider it to be correct or inaccurate.                  25 <b>Q If you believe data that you're looking at</b></p>

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1 is incorrect, how do you take it into  
 2 consideration?  
 3 A I try to take steps to correct it so I can  
 4 rely upon it, so I can use it.  
 5 **Q What were you engaged in this case by Weil**  
 6 **to do?**  
 7 A To produce an appraisal report for the  
 8 60-some-odd thousand objects in the DIA  
 9 collection.  
 10 **Q And what was the purpose of that report?**  
 11 A The purpose of the report was presumably  
 12 that it would be used in bankruptcy  
 13 proceedings.  
 14 **Q Were you aware of any specific purpose**  
 15 **that it would be used for in bankruptcy**  
 16 **proceedings?**  
 17 A I think bankruptcy proceedings are fairly  
 18 specific.  
 19 **Q Am I correct that the purpose of your**  
 20 **appraisal was that it be used to determine the**  
 21 **collateral value of the DIA collection for a**  
 22 **loan for the City of Detroit?**  
 23 MR. PEREZ: Object to the form of the  
 24 question. Assumes facts not in evidence.  
 25 THE WITNESS: I can answer?

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1 MR. PEREZ: Yeah.  
 2 A Okay. The -- as I said, the initial  
 3 parameters of my engagement were with Mr. Peck.  
 4 The -- it was my understanding that the report  
 5 that I would supply to Weil would fulfill two  
 6 purposes: One, to be used in the bankruptcy  
 7 proceeding, which is acceptable to Weil.  
 8 The second was that it would be used  
 9 potentially for the procurement of  
 10 collateral -- will be used as, what shall we  
 11 say, demonstration of the economic potential of  
 12 the collection to be used as collateral.  
 13 **Q And how did you understand your appraisal**  
 14 **would be used in the bankruptcy proceeding?**  
 15 A That it would be used by Weil and the  
 16 clients to serve as a determination of the  
 17 value of the Detroit collection.  
 18 **Q The value in a sale context?**  
 19 A The value in any context.  
 20 **Q Well, wouldn't you agree with me that the**  
 21 **context in which property being appraised would**  
 22 **be sold is part of the analysis that you must**  
 23 **use in determining the definition of value and**  
 24 **methodology for your appraisal?**  
 25 A I would agree with that, yes.

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1 **Q So in what context did you understand the**  
 2 **appraisal would be used in the bankruptcy**  
 3 **proceeding here?**  
 4 MR. PEREZ: Object to the form of the  
 5 question. Asked and answered.  
 6 A I stated very clearly that the appraisal  
 7 report would be used in the bankruptcy  
 8 proceeding, in my opinion -- in -- consistent  
 9 with my understanding, and that Mr. Peck could  
 10 then use the appraisal report for the  
 11 procurement of a loan in which the collection  
 12 would be used as collateral.  
 13 BY MR. ABEL:  
 14 **Q If the context of the sale is important to**  
 15 **determining the definition of value and**  
 16 **methodology to be used in appraisal, what was**  
 17 **the context of the sale you were envisioning**  
 18 **taking place in the bankruptcy proceeding?**  
 19 A I wasn't -- I didn't envision any sale  
 20 taking place. I envisioned that the objects  
 21 would be used for collateral purposes.  
 22 It could possibly be used for sale, but my  
 23 report, I think, clearly states that the  
 24 parameters were for collateralized transaction  
 25 purposes.

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1 **Q So what adjustments to the opinions in**  
 2 **your report would be required to take into**  
 3 **account the sale of the DIA collection as**  
 4 **opposed to the use of it as collateral for a**  
 5 **loan?**  
 6 A If it were -- if my report were to be used  
 7 in a sales situation, I don't think many  
 8 adjustments would need to be taken.  
 9 **Q Well, which adjustments would need to be**  
 10 **taken?**  
 11 A Well, I think that the value of marketable  
 12 cash value would most likely be appropriate for  
 13 either collateralized purposes or sale  
 14 situations.  
 15 **Q You said before that you've never**  
 16 **performed an appraisal in the context of a**  
 17 **bankruptcy; is that right?**  
 18 A That's correct.  
 19 **Q So how are you aware of the circumstances**  
 20 **of a bankruptcy sale and how that would impact**  
 21 **the definition of value and methodology to be**  
 22 **used in an appraisal of property sold in that**  
 23 **context?**  
 24 MR. PEREZ: Object to the form of the  
 25 question.

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1 A These are -- one doesn't have to  
 2 necessarily perform it to understand it. These  
 3 are circumstances with which -- which form a  
 4 part of my curriculum at New York University.  
 5 BY MR. ABEL:  
 6 Q You taught a course at New York University  
 7 about bankruptcy sale?  
 8 A I taught a -- I teach a course at New York  
 9 University, it's ongoing, which covers  
 10 bankruptcy.  
 11 Q And do you have any written presentation  
 12 that goes along with that course?  
 13 A I have a course outline that is  
 14 distributed to students.  
 15 Q And does that course outline describe the  
 16 particulars of how you perform a valuation in  
 17 the context of a bankruptcy?  
 18 A It covers the topic. It doesn't give  
 19 detail. That's covered in classroom  
 20 discussion.  
 21 Q Is there any publication that you have  
 22 your students review in order to determine or  
 23 to discuss the proper methodology for a  
 24 valuation in the context of bankruptcy?  
 25 A There is.

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1 Q And what is that?  
 2 A Several publications.  
 3 There is -- bankruptcy situations are  
 4 discussed in a valuation context within the, at  
 5 least the 2003 appraisal handbook, which I  
 6 coauthored or as co-editor and authored a good  
 7 deal of the text.  
 8 It's also discussed in, I believe, in  
 9 various cases that are published in the basic  
 10 textbook for the course, which is Art Law,  
 11 written by Ralph Lerner and Judith Bressler.  
 12 And I also encourage my students to search  
 13 online sources for current cases that may  
 14 relate to a variety of topics, one of which  
 15 being bankruptcy proceedings.  
 16 Q The 2003 appraisal handbook you're  
 17 referring to, is that the treatise entitled  
 18 "All About Appraising"?  
 19 A That is correct.  
 20 Q And you believe the information contained  
 21 in there is -- contain in there accurately  
 22 reflects the standards of your profession with  
 23 regard to a valuation?  
 24 A I do.  
 25 Q Has any of the standards discussed in the

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1 appraisal handbook changed since 2003, with  
 2 regard to bankruptcy valuations?  
 3 A I don't think so.  
 4 Q Did you intend that your appraisal in this  
 5 case would be utilized to determine the value  
 6 at which the DIA collection could be sold on  
 7 the market?  
 8 A It was a possibility, yes.  
 9 Q Was it your intention that your appraisal  
 10 could be used for the purpose of determining  
 11 how much money could be realized by the DIA in  
 12 its sale of its collection?  
 13 MR. PEREZ: Object to the question. Asked  
 14 and answered.  
 15 BY MR. ABEL:  
 16 Q You can answer.  
 17 A The primary purpose of the appraisal was  
 18 to determine the value of the collection for  
 19 bankruptcy proceedings.  
 20 The secondary -- the secondary use of the  
 21 appraisal, as stated in my report, was that it  
 22 would be used for the procurement of a loan.  
 23 What took place within the context of  
 24 bankruptcy were specific situations that I  
 25 could not envision because I was not privy to

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1 all of the financial situations and/or  
 2 financial backup, so I really don't know.  
 3 But I could envision that it would be used  
 4 for some type of sale.  
 5 Q Well, let's step back and parse that  
 6 comment.  
 7 You said you could envision it being used  
 8 for -- in conjunction with the sale.  
 9 Did you intend that your appraisal in this  
 10 case be utilized to determine the amount of  
 11 money the DIA could realize on the sale of its  
 12 collection?  
 13 MR. PEREZ: Object to the form of the  
 14 question. Asked and answered.  
 15 A In "intend," with my appraisal report was  
 16 not determinative to intention.  
 17 I could envision that the report may be  
 18 used for potential sale, that the value -- that  
 19 each individual object was valued individually.  
 20 And that there was always that possibility.  
 21 The intention or intended use of the  
 22 report, I think, is pretty fairly stated in the  
 23 report.  
 24 Q And you're required by USPAP to detail the  
 25 intended use of your appraisal report in the

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1 report itself; isn't that right?

2 MR. PEREZ: Objection to the question.

3 Asked and answered.

4 BY MR. ABEL:

5 Q You can answer.

6 A USPAP asks -- again, it gives the

7 appraiser great latitude, but asks the

8 appraiser to state the intended use of the

9 report.

10 Q And was the intended use of your appraisal

11 report, under USPAP, to determine how much

12 money the DIA would realize in a sale of its

13 collection?

14 MR. PEREZ: Object to the form of the

15 question. Asked and answered.

16 You can answer.

17 THE WITNESS: I can answer?

18 MR. PEREZ: Yeah.

19 A The intended use of the report was to be

20 used by Weil in the bankruptcy proceeding.

21 BY MR. ABEL:

22 Q And was it your understanding that one of

23 those intended uses in the bankruptcy

24 proceeding was to determine how much money the

25 DIA could realize in the sale of its

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1 collection?

2 MR. PEREZ: Same objection.

3 BY MR. ABEL:

4 Q You can answer.

5 A And the answer remains the same, it is

6 my -- I don't know how it would be used.

7 My -- the intended use of my appraisal

8 report was to determine the value of the

9 subject property in connection with the

10 bankruptcy proceeding, full stop.

11 Q Did ACG ever tell you that anyone was --

12 sorry. Strike that.

13 Did ACG ever tell you that they had made a

14 loan proposal with regard to the DIA collection

15 in an amount not to exceed \$2 billion?

16 A I can't recall whether ACG told me, but it

17 was -- it was stated in -- in an -- in an

18 exhibit, I believe, of the Houlihan Lokey

19 report.

20 Q Did you ever see the proposal from ACG

21 with regard to its loan, with regard to the DIA

22 holdings?

23 A No.

24 Q Do you know how ACG arrived at the

25 2 billion-dollar number?

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1 A I have no idea.

2 Q Why did you take on the engagement to

3 appraise the DIA, given your misgivings about

4 the sale of its collection?

5 A I took on --

6 MR. PEREZ: Object to the form of the

7 question.

8 THE WITNESS: I can answer?

9 MR. PEREZ: Yeah.

10 A I took on the engagement, as I've stated

11 earlier, because I was afraid that the

12 collection was imperilled and that I thought

13 that a viable solution would be, considering

14 all factors, what little I knew, would be to

15 collateralize the collection and use it for a

16 loan that in turn would satisfy the creditors.

17 BY MR. ABEL:

18 Q And if a loan is not possible in this

19 context, do you still -- no, let's strike that.

20 Take a step back.

21 Did you have any misgivings about this

22 assignment?

23 Am I correct you did?

24 MR. PEREZ: Object to the form of the

25 question. Assumes facts not in evidence.

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1 A I don't know if "misgivings" is the

2 correct word.

3 I had -- "misgivings" is too strong a

4 term.

5 I had concerns. I, as I testified

6 already, and it's written in my report, I

7 believed the public trust would be served well

8 by a properly prepared appraisal report.

9 BY MR. ABEL:

10 Q Did you ultimately conclude that a loan

11 was a viable plan for the DIA collection?

12 A That's beyond the scope of my work or my

13 competence.

14 Q Let's take a look at your report,

15 Exhibit 3, Page 4, under the category "The

16 Decision to Accept the Assignment."

17 Do you see the paragraph in the middle of

18 the page that begins "However"?

19 A I do.

20 Q If you read after the words "Houlihan

21 catalogue" it states: "Mr. Wiener was

22 convinced that a loan was a viable plan for the

23 DIA collection, including the loan proposed by

24 ACG."

25 Did you write that sentence?

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1 A I did.

2 Q So how were you convinced that a loan was

3 a viable plan for the DIA collection if you

4 lack the experience necessary to form that

5 opinion?

6 A Because that's the way it was presented to

7 me by Mr. Peck, and that it was written in the

8 Houlihan Lokey report that -- or catalog, as it

9 stated, that it was included as a possible

10 option.

11 Q And because that Mr. Peck and Houlihan

12 Lokey identified that as an option, you were

13 convinced that it was a viable plan for the DIA

14 collection?

15 A I believed it would be a viable plan.

16 Q Have you ever served as broker with regard

17 to loans with regard to art?

18 A As a broker?

19 Q Yes.

20 A No.

21 Q Have you ever advised a client to get a

22 loan secured by art in any capacity?

23 A I worked for lending institutions.

24 Q Which lending institutions?

25 THE WITNESS: Can I reveal that without

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1 breaching confidentiality?

2 MR. PEREZ: Is there a confidentiality

3 agreement in place?

4 THE WITNESS: There are confidentiality

5 agreements in place with every lending

6 institution that I work with.

7 BY MR. ABEL:

8 Q Well, how many different lending

9 institutions do you work with in conjunction

10 with valuing art to secure loans?

11 A I think about five or six.

12 Q An dhow many different engagements have

13 you been involved in to -- on behalf of lending

14 agencies to determine the value of art in

15 conjunction with a loan?

16 A Numerous.

17 Q How many, approximately?

18 A Twenty, maybe more.

19 Q What percentage of your practice at VWA is

20 done in conjunction with providing consulting

21 services to lending companies?

22 A It varies from year to year, so . . .

23 Q Well, last year, what percentage of your

24 work at VWA was done in conjunction with

25 lending agencies?

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1 A Possibly 15 or 20 percent. I would have

2 to review our records.

3 Q Do you know what percentage of revenue

4 that work related to for the VWA?

5 A I would -- you mean the billing --

6 Q Yes.

7 A -- is that correct?

8 No, I haven't done any analysis as far as

9 billing, as far as revenue sources go.

10 Q Do you know on what terms a loan was

11 offered with regard to the DIA collection?

12 A I have no idea.

13 Q Do you know what the ability of the DIA or

14 the City of Detroit would be to service that

15 loan?

16 A I do not.

17 Q Do you know how the DIA would get money to

18 service that loan?

19 A I do not.

20 Q Did you do any analysis to determine how

21 the DIA could potentially pay off any loan from

22 ACG?

23 A I did not.

24 Q So how were you convinced that it was a

25 good idea for the DIA to, or the City of

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1 Detroit to borrow money secured by the DIA

2 collection?

3 A I, as I've testified, I saw -- I believed

4 it was a viable option since it was included in

5 the Houlihan Lokey report, and then from

6 representations made to me by Mr. Peck.

7 Q You understand that in any loan situation

8 there's a possibility for default?

9 A I do.

10 Q Did you ever take into consideration how

11 likely it would be that the City of Detroit

12 would default on the loan and the DIA

13 collection would be forcibly sold in that

14 context?

15 A I did not.

16 Q Did that play any role in your decision to

17 take on the assignment in this case?

18 A Did what play?

19 Q The possibility that there could be a

20 foreclosure and forced sale of the DIA

21 collection.

22 A In any loan situation there is the

23 possibility of foreclosure. It's inherent to

24 the assignment, of any loan assignment.

25 Q And what happens in the context of a

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<p style="text-align: right;">Page 122</p> <p>1 foreclosure of art, in your experience?</p> <p>2 A Well, I haven't been involved with too</p> <p>3 many foreclosures. But at a certain point, and</p> <p>4 I think it varies from case to case, from my</p> <p>5 discussions with my clients, the lender will</p> <p>6 take possession of the collateral and the</p> <p>7 collateral will be liquidated in one form or</p> <p>8 another.</p> <p>9 Q What do you mean by "liquidated"?</p> <p>10 A Liquidated means sold; or could be then</p> <p>11 used for another loan. I don't know. It could</p> <p>12 be. But certainly there would be some type of</p> <p>13 transaction that would make the lender whole in</p> <p>14 a case of a default.</p> <p>15 Q In your experience, how frequently are</p> <p>16 collections in foreclosure actions liquidated?</p> <p>17 A Not that often.</p> <p>18 Q Well, let me take a step back. Perhaps I</p> <p>19 phrased it inartfully.</p> <p>20 How quickly are collections that are</p> <p>21 subject to a foreclosure action sold, in your</p> <p>22 experience?</p> <p>23 MR. PEREZ: Object to the form of the</p> <p>24 question. Assumes facts not in evidence.</p> <p>25 A I'm sorry, could you -- I'm not sure I</p>	<p style="text-align: right;">Page 124</p> <p>1 question?</p> <p>2 Q Yes.</p> <p>3 A Several hundred.</p> <p>4 Q And do you know who foreclosed on that</p> <p>5 collection?</p> <p>6 A I was -- well, this is public knowledge,</p> <p>7 so I can put it out there.</p> <p>8 I was consulted by Merrill Lynch, who</p> <p>9 eventually foreclosed on, I forgot his name,</p> <p>10 Mr. Meyer's collection, which they advanced</p> <p>11 money from.</p> <p>12 I reviewed the lending documents and I</p> <p>13 read in the paper that -- and I was paid for my</p> <p>14 services. I read in the papers that -- at</p> <p>15 least, that eventually a sale took place, I</p> <p>16 believe at Christie's and Sotherby's. There</p> <p>17 were quite a few objects.</p> <p>18 Q And how long after the foreclosure did</p> <p>19 that sale take place?</p> <p>20 A I believe several months. It was sold in</p> <p>21 on orderly sales fashion.</p> <p>22 Q What does that mean?</p> <p>23 A What does an "orderly sales fashion" mean?</p> <p>24 Q Yes.</p> <p>25 A It means was that the collection was sold</p>
<p style="text-align: right;">Page 123</p> <p>1 understood the question. Could you repeat it?</p> <p>2 BY MR. ABEL:</p> <p>3 Q Sure.</p> <p>4 In your experience, when art collections</p> <p>5 are foreclosed upon in conjunction of a loan</p> <p>6 default, how quickly are they sold by the</p> <p>7 lender in question?</p> <p>8 A Generally speaking, in that type of</p> <p>9 situation, they are sold in an orderly sales</p> <p>10 transaction, which would take place over time.</p> <p>11 Q And with regard to how many different</p> <p>12 foreclosures have you been involved in your</p> <p>13 career, with regard to art collection?</p> <p>14 A Very few.</p> <p>15 Q Can you tell me approximately how many?</p> <p>16 A One or two.</p> <p>17 Q And what were the sizes of those two</p> <p>18 collections that were sold in the foreclosure</p> <p>19 environment?</p> <p>20 A One was considerably large and the other</p> <p>21 was relatively modest in size.</p> <p>22 Q And the one that you say was considerably</p> <p>23 large, what was the value of objects in that</p> <p>24 collection?</p> <p>25 A About how many objects; is that your</p>	<p style="text-align: right;">Page 125</p> <p>1 in a manner to maximize the amount of money the</p> <p>2 lender would receive for the foreclosed</p> <p>3 property.</p> <p>4 Q In the context of that sale, the orderly</p> <p>5 liquidation could take place over several</p> <p>6 months, you said?</p> <p>7 A I believe so.</p> <p>8 Q And what was your involvement in that</p> <p>9 engagement?</p> <p>10 A I was a consultant.</p> <p>11 Q Did you perform a valuation determination</p> <p>12 with regard to the collection?</p> <p>13 A I did.</p> <p>14 Q And what was the nature, or definition of</p> <p>15 value you used in that context?</p> <p>16 A Marketable cash value.</p> <p>17 Q Have you ever performed a valuation</p> <p>18 utilizing liquidation value?</p> <p>19 A No.</p> <p>20 Q What is "liquidation value"?</p> <p>21 A Liquidation value -- is the value that</p> <p>22 would be used in a forced sale situation, which</p> <p>23 would be forced sale, as opposed to an orderly</p> <p>24 sale, or one could say a disorderly sale, in</p> <p>25 which the collection was sold in a marketplace</p>



<p style="text-align: right;">Page 126</p> <p>1 in which the value of the collection would not                  2 be maximized because of the time element                  3 involved, and consequently the amount of money                  4 received would be lower than what would be                  5 received if the collection were to be sold in                  6 an orderly sale situation.                  7 <b>Q Jumping around a little bit. Let's go                  8 back to discussing USPAP.</b>                  9 <b>Do you believe USPAP is a binding code of                  10 ethics that governs your work?</b>                  11 <b>A Yes.</b>                  12 <b>Q What would be the impact on one of your                  13 appraisals if it wasn't compliant with USPAP?</b>                  14 <b>A USPAP is not federally regulated, or state                  15 regulated for that matter, in their personal                  16 property. So there's no discrediting body to                  17 discredit an appraisal report.</b>                  18 <b>Q Would you agree with me that personal                  19 property appraising is a nonregulated                  20 profession?</b>                  21 <b>A That's correct.</b>                  22 <b>Q And that would you agree with me that one                  23 of the reasons why appraisers join                  24 organizations like the Appraisers Association                  25 of American is in an effort to gain credibility</b></p>	<p style="text-align: right;">Page 128</p> <p>1 <b>BY MR. ABEL:</b>                  2 <b>Q I'd like you to take a look at Page F85.</b>                  3 <b>Unfortunately, it's, you know, a little bit out                  4 of order since the page numbers are in their                  5 backwards. But 85 is at the top of the -- no,                  6 it has Item 89 through 191 on there.</b>                  7 <b>Do you see what I'm referring to?</b>                  8 <b>A I do.</b>                  9 <b>Q If you look at the response under                  10 "Calculating Blockage Discount" it reads:                  11 "Note: USPAP focuses on appraisal                  12 standards" --</b>                  13 <b>A Which -- are you on 189 or 190?</b>                  14 <b>Q Sorry, 191.</b>                  15 <b>A 191, where it says "Calculating Blockage                  16 Discount"?</b>                  17 <b>Q Yes, in the response.</b>                  18 <b>Am I correct it provides -- "USPAP focuses                  19 on appraisal standards not appraisal                  20 methodology or how-to-perform calculations."                  21 Did I read that correctly?</b>                  22 <b>A Correct.</b>                  23 <b>Q Does that change your opinion as to                  24 whether or not USPAP focuses on appraisal                  25 standards not appraisal methodology?</b></p>
<p style="text-align: right;">Page 127</p> <p>1 <b>and recognition?</b>                  2 <b>A That's correct.</b>                  3 <b>Q And do you agree with me that there are                  4 other individuals performing valuations of                  5 personal property that don't use USPAP?</b>                  6 <b>A I do.</b>                  7 <b>Q And USPAP itself focuses on appraisal                  8 standards not appraisal methodology; is that                  9 right?</b>                  10 <b>A No.</b>                  11 <b>Q That's not right?</b>                  12 <b>A No.</b>                  13 (Deposition Exhibit 5, Extract from the                  14 USPAP Frequently Asked Questions, marked for                  15 identification as of this date.)                  16 <b>MR. PEREZ: What number is it?</b>                  17 <b>MR. ABEL: 5.</b>                  18 <b>BY MR. ABEL:</b>                  19 <b>Q I'm showing you a document that's been                  20 marked Deposition Exhibit 5.</b>                  21 <b>MR. ABEL: And I will represent for the                  22 record that this is an extract from the USPAP                  23 frequently asked questions, a document from the                  24 Appraisal Foundation website.</b>                  25</p>	<p style="text-align: right;">Page 129</p> <p>1 <b>A It doesn't change my opinion.</b>                  2 <b>Q So -- okay.</b>                  3 <b>You consider yourself to be an expert on                  4 USPAP?</b>                  5 <b>A I do.</b>                  6 <b>Q Did you write the USPAP Frequently Asked                  7 Question portion of the manual?</b>                  8 <b>A I did not.</b>                  9 <b>Q Did you review it previously?</b>                  10 <b>A I reviewed it from time to time.</b>                  11 <b>Q Did you ever tell the authors of USPAP                  12 that they are incorrect in their "Frequently                  13 Asked Questions" section of their manual?</b>                  14 <b>A In certain cases, yes.</b>                  15 <b>Q So you disagree with the authors of the                  16 manual as to what USPAP actually requires?</b>                  17 <b>A This is not -- let's go back. You're                  18 mischaracterizing the document.</b>                  19 <b>This is not a manual. These are -- nor is                  20 it binding part of USPAP, as it states very                  21 clearly in the document.</b>                  22 <b>These are frequently asked questions that                  23 are issued by people within the Appraisal                  24 Foundation or the appraisal subcommittee, the                  25 appraisal standards board. Sorry. I take back</b></p>

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1 subcommittee, I say Appraisal Standards board.  
 2 So these are not -- have no weight, weight  
 3 of USPAP, and this is clearly stated within the  
 4 document. And if you look at the big book that  
 5 you, I think you had, there's an absolute  
 6 division, and it says something to the effect  
 7 of nonbinding or opinions or whatever, and  
 8 that's where frequently asked questions appear.  
 9 So I take issue with the vocabulary used  
 10 in -- are we talking about No. 191, I believe,  
 11 or is it 190?  
 12 I forget.  
 13 **Q Do you know who drafted the opinions**  
 14 **expressed in the FAQ to the USPAP?**  
 15 A There's no author given.  
 16 **Q Have you ever heard the term "appraisal**  
 17 **consulting" before?**  
 18 A I have.  
 19 **Q And am I correct that an appraisal**  
 20 **consulting does not require a USPAP appraisal?**  
 21 A At present it does not.  
 22 **Q What is an "appraisal consulting"?**  
 23 A An appraisal consulting assignment is when  
 24 a consultant who relies, to a certain extent,  
 25 on valuation, will offer advice or primarily a

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1 recommendation to a client for whatever the  
 2 assignment happens to be.  
 3 **Q During -- am I correct that you were**  
 4 **previously an executive director of the**  
 5 **Appraisers Association of America?**  
 6 A You are.  
 7 **Q If I refer to that as the "AAA," you'll**  
 8 **understand to what I'm referring?**  
 9 A Of course.  
 10 **Q And am I correct that the AAA actually**  
 11 **published a position paper during your tenure**  
 12 **as the executive director of the AAA that**  
 13 **disagreed with the Appraisal Foundation and**  
 14 **Appraisal Standards Board, the author of USPAP,**  
 15 **regarding whether appraisers can provide**  
 16 **opinions of value without those opinions being**  
 17 **USPAP compliant?**  
 18 A I am.  
 19 **Q And the AAA said that its appraisers could**  
 20 **do so, could provide opinions of value without**  
 21 **those opinions being USPAP compliant?**  
 22 A It did.  
 23 **Q We've been talking for a while about the**  
 24 **different definitions of value that can be used**  
 25 **in appraisal.**

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1 **You mentioned before insurance value; is**  
 2 **that right?**  
 3 A I don't use the term "insurance value."  
 4 **Q What do you refer to?**  
 5 **Do you use the term "replacement value"?**  
 6 A Retail replacement value.  
 7 **Q Retail replacement value.**  
 8 **Is that the highest definition of value**  
 9 **utilized in an appraisal?**  
 10 A Again, it's not a definition -- well, it's  
 11 not a definition of value.  
 12 It is the -- well, it's a defined term.  
 13 It is the -- in a structure or hierarchy of  
 14 value, it would be the highest amount under  
 15 most circumstances.  
 16 **Q What would be the next highest amount?**  
 17 A Fair market value.  
 18 **Q What is fair market value?**  
 19 A Fair market value is the, as was defined  
 20 in the 2003 handbook of the Appraisers  
 21 Association, the amount of money that would be  
 22 paid by a willing buyer to a willing seller,  
 23 neither being under compulsion to buy or sell,  
 24 both being knowledgeable of all the relevant  
 25 facts.

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1 And I believe that definition also carries  
 2 with it a clarification or proviso that fair  
 3 market value takes into consideration all  
 4 transaction costs.  
 5 **Q For what purposes do you use a fair market**  
 6 **value?**  
 7 A Fair market value is basically -- the main  
 8 purpose for using fair market value is it's a  
 9 defined term by the federal government, is for  
 10 internal revenue services purposes, internal  
 11 IRS purposes.  
 12 The fair market value is also frequently  
 13 used in the determination of compensation due  
 14 to a -- an insured individual in the event of a  
 15 partial loss of a -- an object that had been  
 16 insured.  
 17 Those are the two main applications of  
 18 fair market value.  
 19 **Q Okay. What is marketable cash value?**  
 20 A Marketable cash value is the value net --  
 21 it's basically fair market value, net of all  
 22 transaction costs.  
 23 **Q So it also involved a willing buyer and a**  
 24 **willing seller with no compulsion?**  
 25 A But being knowledgeable of all the

<p style="text-align: right;">Page 134</p> <p>1 relevant facts, yes.</p> <p>2 <b>Q And what is "liquidation value"?</b></p> <p>3 A Liquidation value is generally used in</p> <p>4 many bankruptcy proceedings, as I've testified</p> <p>5 earlier, where a forced sale is involved, and</p> <p>6 the seller, for whatever reason, does not have</p> <p>7 the luxury of time and the possibility of</p> <p>8 selling the objects in an orderly sale</p> <p>9 situation.</p> <p>10 <b>Q How does retail replacement value differ</b></p> <p>11 <b>from fair market value or marketable cash</b></p> <p>12 <b>value?</b></p> <p>13 A In all the definitions, a value is</p> <p>14 determined by the interaction of a buyer and a</p> <p>15 seller.</p> <p>16 If you didn't have a willing buyer and you</p> <p>17 didn't have a willing seller, your property</p> <p>18 would be valueless. I can't think of any</p> <p>19 instances where this would occur, but</p> <p>20 nonetheless there is always that hypothetical</p> <p>21 possibility.</p> <p>22 Retail replacement value is calculated --</p> <p>23 let me backtrack.</p> <p>24 We have two individuals determining value,</p> <p>25 the buyer and the seller. Retail replacement</p>	<p style="text-align: right;">Page 136</p> <p>1 were to decide is up to the Court.</p> <p>2 <b>Q Okay. So if you were to attempt to come</b></p> <p>3 <b>up with a marketable cash value for the entire</b></p> <p>4 <b>DIA collection, would be permissible to take a</b></p> <p>5 <b>marketable cash value assessment of one portion</b></p> <p>6 <b>of the collection and simply add it to a retail</b></p> <p>7 <b>replacement value for another part of the</b></p> <p>8 <b>collection to get the total value?</b></p> <p>9 A I don't quite understand the question,</p> <p>10 permissible --</p> <p>11 <b>Q Appropriate in your profession.</b></p> <p>12 A Every application of value is a case</p> <p>13 specific situation. So I don't necessarily</p> <p>14 feel comfortable in responding in generalities.</p> <p>15 <b>Q Well, I'm going to ask you, as an expert,</b></p> <p>16 <b>to assume a hypothetical.</b></p> <p>17 <b>Okay?</b></p> <p>18 A Yes.</p> <p>19 <b>Q Assume for a valuation you are asked to</b></p> <p>20 <b>do, that you were asked to determine the</b></p> <p>21 <b>marketable cash value of an entire collection.</b></p> <p>22 <b>That's the first assumption.</b></p> <p>23 <b>Okay?</b></p> <p>24 A Yes.</p> <p>25 <b>Q Assume then you were asked to value a</b></p>
<p style="text-align: right;">Page 135</p> <p>1 value is determined from the perspective of the</p> <p>2 buyer, how much would a buyer have to pay if he</p> <p>3 or she were to go out into the marketplace in a</p> <p>4 relatively short amount of time and replace</p> <p>5 that object with a similar and like object.</p> <p>6 Okay.</p> <p>7 Retail, I mean -- sorry.</p> <p>8 Fair market value, marketable cash value,</p> <p>9 and liquidation value are -- is determined from</p> <p>10 the perspective of the seller, how much would</p> <p>11 the seller actually receive if he or she were</p> <p>12 to sell the object at a certain time.</p> <p>13 <b>Q Are the different standards of value that</b></p> <p>14 <b>went through interchangeable?</b></p> <p>15 <b>For example, if the Court liked a fair</b></p> <p>16 <b>market value analysis of one piece of the DIA</b></p> <p>17 <b>collection, and a marketable cash value for</b></p> <p>18 <b>another piece of the DIA collection, could it</b></p> <p>19 <b>take those two values and add them together?</b></p> <p>20 A That would be a determination of the</p> <p>21 Court.</p> <p>22 <b>Q Can it do that as a proper valuation</b></p> <p>23 <b>method, from your perspective?</b></p> <p>24 A The appraiser provides a value consistent</p> <p>25 with the definition of value. What the Court</p>	<p style="text-align: right;">Page 137</p> <p>1 <b>portion of that collection utilizing retail</b></p> <p>2 <b>replacement value.</b></p> <p>3 <b>Okay?</b></p> <p>4 A Yes.</p> <p>5 <b>Q And then assume you were asked to value</b></p> <p>6 <b>another portion of that collection using</b></p> <p>7 <b>marketable cash value.</b></p> <p>8 A Yes.</p> <p>9 <b>Q Is it permissible, in your profession, to</b></p> <p>10 <b>determine the marketable cash value of the</b></p> <p>11 <b>entire collection by adding together the retail</b></p> <p>12 <b>replacement value for a portion of the</b></p> <p>13 <b>collection with the marketable cash value for</b></p> <p>14 <b>the remainder of the collection?</b></p> <p>15 MR. PEREZ: Is this a hypothetical?</p> <p>16 MR. ABEL: This is a hypothetical.</p> <p>17 A But the question is permissible by whom?</p> <p>18 BY MR. ABEL:</p> <p>19 <b>Q In your profession.</b></p> <p>20 A I understand in my profession. But you</p> <p>21 use the word "permissible." I'm don't</p> <p>22 understand, who's permitting or not permitting?</p> <p>23 <b>Q Let's make it easier.</b></p> <p>24 <b>Do you believe -- is it consistent with</b></p> <p>25 <b>USPAP or the standards you believe are</b></p>

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1 applicable governing your profession to value  
 2 an entire collection utilizing -- for  
 3 marketable cash value purposes, using a portion  
 4 of the collection valued at retail replacement  
 5 value, and a portion of the collection valued  
 6 at marketable cash value?  
 7 MR. PEREZ: Object to the form of the  
 8 question. Assumes facts not in evidence.  
 9 A Well, is your question is it -- what word  
 10 did you say with USPAP permissible?  
 11 What is the word you used that's an  
 12 important --  
 13 Q So let's break it down.  
 14 Is it consistent with USPAP to value an  
 15 entire collection under a marketable cash value  
 16 assessment by valuing a portion of that  
 17 collection utilizing retail replacement value,  
 18 a portion of the collection using marketable  
 19 cash value, then adding those two values  
 20 together?  
 21 A Is that consistent with USPAP --  
 22 Q Yes.  
 23 A -- is that correct?  
 24 Q Yes.  
 25 A Yes.

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1 Q So you can add -- so what you're saying  
 2 is: Even though retail replacement value and  
 3 marketable cash value are different, you can  
 4 simply add a retail replacement value to a  
 5 marketable cash value and get a marketable cash  
 6 value for the total collection?  
 7 A Again, this is a generality, and you'd  
 8 have to give me a case-specific statement.  
 9 USPAP calls for --  
 10 Q Let's make it easier.  
 11 MR. PEREZ: Let him finish his answer.  
 12 MR. ABEL: Actually, I have another  
 13 question.  
 14 A I haven't answered my question properly.  
 15 BY MR. ABEL:  
 16 Q I'm going to make it even easier.  
 17 A Okay.  
 18 Q Assume that for Step 3 of your report you  
 19 determine an insurance value or retail  
 20 replacement value.  
 21 Okay?  
 22 A Hypothetically.  
 23 Q Hypothetically.  
 24 And assume that for the rest of the steps  
 25 in your report you determined a marketable cash

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1 value.  
 2 A Correct.  
 3 Q Can you determine the marketable cash  
 4 value for the entire collection simply by  
 5 adding Step 3 to the other steps?  
 6 A The devil is in the details. It depends  
 7 how it's done. I can't answer generally.  
 8 Q Have you ever done that before, utilized  
 9 different definitions of value and just add  
 10 them together to get a definition, a marketable  
 11 cash value definition?  
 12 MR. PEREZ: Object to the form of the  
 13 question. Assumes facts not in evidence.  
 14 A Again, one takes into consideration a  
 15 variety of factors and previous valuations and  
 16 makes a determination.  
 17 I haven't -- I don't think I've done  
 18 exactly what you've described, but I've  
 19 certainly taken all these factors into  
 20 consideration, and not necessarily done a  
 21 mathematical, what shall we say, summation  
 22 conclusion, but it's all cite-specific and has  
 23 to be defined.  
 24 BY MR. ABEL:  
 25 Q What was the total marketable cash value

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1 of the DIA collection, in your opinion?  
 2 A As stated in the report, 8,552,000,000, so  
 3 on.  
 4 Q You actually said it was 8,552,395,675 and  
 5 probably more than that.  
 6 A That's what I said, and that's what I  
 7 believe.  
 8 Q And what's the probability that the value  
 9 is higher than that?  
 10 A There is a probability. But I haven't  
 11 made that determination at this point. But  
 12 there certainly is every indication that the  
 13 value probably would be higher than that.  
 14 Q And what's the probability that it's lower  
 15 than that?  
 16 A Not too much.  
 17 Q Are you opining that the City of Detroit  
 18 would have received approximately 8.5 billion  
 19 if the entire collection was sold?  
 20 A In an orderly sales situation, yes.  
 21 Q Would you agree with me that marketable  
 22 cash value is typically used in divorce  
 23 settlements?  
 24 A Yes.  
 25 Q And would you agree with me that the

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1 concept of time is a very important operative  
 2 factor in determining marketable cash value?  
 3 A Depends upon the divorce.  
 4 Q Well, outside of the divorce context,  
 5 would you agree with me that the concept of  
 6 time is very important in determining  
 7 marketable cash value?  
 8 A Concept of time is very important in  
 9 determining all value.  
 10 Q And how did you take time into  
 11 consideration in your appraisal here?  
 12 A In what sense?  
 13 Q Well, you said it's important in all  
 14 appraisals.  
 15 How did you take it into account or  
 16 consideration in forming your opinions here?  
 17 A Well --  
 18 MR. PEREZ: Object to the form of the  
 19 question.  
 20 A It's, as I say, implicit in the definition  
 21 of marketable cash value, which marketable cash  
 22 value, by definition, implies an orderly-sales  
 23 situation.  
 24 BY MR. ABEL:  
 25 Q So you assume that there would be an

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1 orderly-sales situation here?  
 2 A I do.  
 3 Q And if that assumption is incorrect, would  
 4 that render your opinion flawed?  
 5 A It depends upon the circumstances.  
 6 Flawed? I don't know.  
 7 It depends upon each individual  
 8 circumstances, and I'm not prepared to answer  
 9 it in general terms.  
 10 Q Well, if this was a forced-sale situation,  
 11 would you agree with me that the proper  
 12 valuation definition to use would be  
 13 liquidation value?  
 14 A It depends upon how the property were to  
 15 be sold.  
 16 When you talk about forced situations, you  
 17 can still have an orderly liquidation or a  
 18 disorderly liquidation. It's depending upon  
 19 the circumstances.  
 20 Q And how many disorderly liquidations have  
 21 you been involved in, in your career?  
 22 A I don't think I've been involved in any.  
 23 Q And how many orderly liquidations have you  
 24 been involved with in your career?  
 25 A Not that many, but some.

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1 Q Do you have any opinion as to whether this  
 2 would be an orderly or disorderly liquidation  
 3 of the DIA collection assets?  
 4 MR. PEREZ: Object. Object to the form of  
 5 the question. Assumes facts not in evidence.  
 6 THE WITNESS: I can answer?  
 7 MR. PEREZ: Yeah.  
 8 A I would expect that if part of the DIA  
 9 collection were to be sold it would be sole --  
 10 there would only be selected objects that would  
 11 be sold, and it would take place in a manner in  
 12 which the sale price would maximize the value  
 13 of the collection, which would mean that it  
 14 would be sold in an orderly sale context.  
 15 BY MR. ABEL:  
 16 Q And how did you form that opinion?  
 17 A Because the -- because the collection,  
 18 under normal circumstances, is of such high  
 19 profile, high value, one would sell it in a  
 20 manner and in the marketplace in which it would  
 21 make the most money.  
 22 Q And how long would it take to do an  
 23 orderly sale of the DIA collection, in your  
 24 opinion?  
 25 A Different sectors of the collection would

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1 be -- would have a different time frame for  
 2 being sold.  
 3 Q How long would it take to sell the entire  
 4 DIA collection, in your opinion?  
 5 A To sell it in an orderly sale context?  
 6 Q Yes.  
 7 A Years.  
 8 Q How many years?  
 9 A I don't know. I haven't done that  
 10 calculation. Nor do I -- it's a general, it's  
 11 calling for a general conclusion that I'm not  
 12 prepared to give you.  
 13 Q You're assuming -- well, I don't need to  
 14 go there.  
 15 You also said marketable cash value is the  
 16 value realized net of expenses; is that right?  
 17 A That's the way it's defined in my present  
 18 report so I could say that.  
 19 Q And what expenses did you net out in  
 20 determining marketable cash value?  
 21 A Marketable cash value in this particular  
 22 situation would be all transaction costs  
 23 connected with it, which would be the buyer's  
 24 premium and possibly a seller's commission,  
 25 although in this particular circumstance I

<p style="text-align: right;">Page 146</p> <p>1 would think that the sellers commission would                  2 be waived by the agent of sale.                  3 <b>Q And what did you assume to be the buyers                  4 premium with regard to the sale of the                  5 collection?</b>                  6 A Buyers premium are all over the place                  7 because, as you may know, if it were to be sold                  8 at auction, each auction house has a                  9 different -- different parameters for buyers                  10 premium.                  11 If part of it were to be sold privately,                  12 through brokers, through dealers, that's open                  13 to negotiation.                  14 Generally speaking, one could probably                  15 look at 10 to 20 percent in buyers premiums.                  16 But, again, this is a general answer, and it's                  17 a case-by-case basis.                  18 <b>Q Case-by-case basis on each piece of art?</b>                  19 A Correct.                  20 <b>Q Well, what buyers premium did you utilize                  21 in Steps 3 -- 2, 3 and 4 of your analysis?</b>                  22 A Generally, we were looking on specific                  23 objects and somewhere between 10 and                  24 20 percent.                  25 <b>Q Well, for Steps 2, 3 and 4, did you do an</b></p>	<p style="text-align: right;">Page 148</p> <p>1 <b>for the objects identified in Steps 2 through 4                  2 of your report?</b>                  3 A My testimony is that we looked at various                  4 categories and we thought the range between 10                  5 and 20 percent. And, again, it would probably                  6 be around 20 percent.                  7 <b>Q What would you look at to determine what                  8 exactly it was for each one of these                  9 categories?</b>                  10 A The -- generally, the value of the objects                  11 within a particular category.                  12 So if you have objects of a relatively low                  13 value, the buyers premium would be higher.                  14 <b>Q Is there any document in your work file                  15 that would detail what buyers commission --                  16 sorry -- what buyers premium you utilized to                  17 value any specific object in Tier 2 through 4?</b>                  18 A I would have to consult the document.                  19 <b>Q But you don't know?</b>                  20 A Off the top of my head.                  21 <b>Q Okay. How about cost to prepare art for                  22 sale; would you take that into account --</b>                  23 A What?                  24 <b>Q The cost to prepare art for sale, did you                  25 take that into account in determining your</b></p>
<p style="text-align: right;">Page 147</p> <p>1 <b>object-by-object analysis of buyers premium?</b>                  2 A Object-by-object?                  3 We did some spot checks of objects, but                  4 not object by object.                  5 <b>Q Okay. So what buyers premium did you                  6 apply to determine the marketable cash value                  7 with regard to Steps 2, 3 and 4?</b>                  8 A Depending upon the value of the object, as                  9 I said, it would probably be between 10 and                  10 20 percent, in this case.                  11 <b>Q Is it your testimony that you went object                  12 by object through Steps 2, 3 and 4 to determine                  13 that buyers premium?</b>                  14 A In this we took, generally -- we did                  15 categories also. And we took, generally, as I                  16 said, between 10 and 20 percent.                  17 <b>Q If the Court were to attempt to determine                  18 what percentage between 10 and 20 you utilized                  19 for those different categories, how could it                  20 determine that?</b>                  21 A Well, generally, the Court would ask me                  22 and I'd say, to be on the safe side, one would                  23 say 20 percent.                  24 <b>Q So your testimony is that you utilized                  25 20 percent in determining the buyers premium</b></p>	<p style="text-align: right;">Page 149</p> <p>1 <b>marketable cash value?</b>                  2 A I don't understand the question.                  3 Cost to prepare art for sale.                  4 <b>Q Sure.</b>                  5 <b>Let's look to Page 15 of your report.</b>                  6 A Sure.                  7 <b>Q Are you there?</b>                  8 <b>We're on -- the report is Exhibit 3.</b>                  9 A I am on Page 15 of Exhibit 3.                  10 <b>Q And the definition of marketable cash                  11 value on Page 15 of your report, that's the                  12 definition that you provided to us?</b>                  13 A That's what?                  14 <b>Q That's the definition that you just                  15 testified to?</b>                  16 A Correct.                  17 <b>Q And if we flip to the next page of your                  18 report.</b>                  19 A Page 16.                  20 <b>Q Page 16.</b>                  21 A Correct.                  22 <b>Q You indicate in the second full paragraph,                  23 talking about the circumstances of a loan                  24 default; is that right, what would happen?</b>                  25 You read: "Under such circumstances, a</p>

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1 value which is net of transaction costs is  
 2 appropriate since the borrower were to forfeit  
 3 on loan payments a lender would confiscate the  
 4 collateral art in this case and sell part or  
 5 all of the property used as collateral to  
 6 satisfy the debt."  
 7 Did I read that correctly?  
 8 A Correct.  
 9 Q Is one of the things that the lender would  
 10 do in the context of a foreclosure to prepare  
 11 the art for sale?  
 12 A I don't understand "prepare the art for  
 13 sale."  
 14 Q Do you have to collect the art and take it  
 15 to an auction house to sell it?  
 16 A Sometimes the auction house collects it.  
 17 Q Is there a cost associated with that?  
 18 A Frequently the auction house assumes that  
 19 cost.  
 20 Q Are there any insurance charges associated  
 21 with holding art taken in a liquidation or  
 22 foreclosure context?  
 23 A There are insurance costs associated with  
 24 the sale of art.  
 25 Q Let's take a step back.

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1 Well, actually, no.  
 2 You testified before you have little  
 3 experience with regard to the foreclosure and  
 4 sale of art collections; isn't that right?  
 5 MR. PEREZ: Object to the form of the  
 6 question. Assumes facts not in evidence.  
 7 A The -- I testified that I have only  
 8 casually been involved with foreclosure sale  
 9 situations.  
 10 BY MR. ABEL:  
 11 Q And do you know what costs were incurred  
 12 by the lender in conjunction with that  
 13 foreclosure sale?  
 14 A I don't not.  
 15 Q Do you know what costs were actually  
 16 realized by the borrower with regard to those  
 17 foreclosure sales?  
 18 A I don't not.  
 19 Q Are you aware of any example where a  
 20 lender has lent money against the full amount  
 21 indicated in the marketable cash value  
 22 appraisal?  
 23 A None.  
 24 Q Did anyone at ACG ever tell you what the  
 25 loan-to-value they were willing to lend against

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1 in this case was with regard to DIA collection?  
 2 A They did not.  
 3 Q You ever hear that the loan maximum --  
 4 that the maximum loan amount from ACG was tied  
 5 to a 20 percent appraised value?  
 6 A I did not.  
 7 Q Are you aware of whether a 20 percent loan  
 8 amount is typical in the lending industry?  
 9 A I have been involved in many different  
 10 loan transactions, and there's no such thing as  
 11 "typical."  
 12 THE WITNESS: Can we take a break now?  
 13 MR. ABEL: Sure.  
 14 THE VIDEOGRAPHER: We're off the record.  
 15 The time is 12:10.  
 16 (Recess taken.)  
 17 THE VIDEOGRAPHER: Go back on the record.  
 18 The time is 12:22. Beginning of DVD No. 3.  
 19 BY MR. ABEL:  
 20 Q Mr. Wiener, am I correct that both  
 21 marketable cash value and fair market value  
 22 require you to assume a willing buyer and a  
 23 willing seller acting without compulsion?  
 24 A I testified to that effect.  
 25 Q In a foreclosure context, are you dealing

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1 with a willing seller acting without  
 2 compulsion?  
 3 A Depends upon the actual situation.  
 4 Q Have you seen any evidence in this case  
 5 that the DIA wants to sell its art collection?  
 6 A I have not.  
 7 Q Have you seen any evidence in this case  
 8 that the DIA is a willing seller acting without  
 9 compulsion in conjunction with the sale of its  
 10 collection?  
 11 MR. PEREZ: Object to the form of the  
 12 question. Assumes facts not in evidence.  
 13 BY MR. ABEL:  
 14 Q I'm asking what evidence you've seen, sir,  
 15 not what facts might be in evidence. So let me  
 16 rephrase it.  
 17 Have you seen any evidence suggesting that  
 18 the DIA is a willing seller acting without  
 19 compulsion with regard to the sale of its  
 20 collection?  
 21 MR. PEREZ: Same objection.  
 22 A I have not.  
 23 BY MR. ABEL:  
 24 Q You don't present a liquidation value  
 25 opinion in this case, do you?

http://www.yeslaw.net/ha3p

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1 A I do not.  
 2 Q The report that you produced in this case,  
 3 dated July 25, 2014, Exhibit 3, can you tell me  
 4 who drafted the first draft of that report?  
 5 A Who drafted the first draft?  
 6 I did.  
 7 Q Yes.  
 8 Were there multiple drafts?  
 9 A There were some revisions.  
 10 Q How many drafts were there?  
 11 A I really can't recall.  
 12 Q And was anyone else involved in editing  
 13 the report?  
 14 A Actually, I showed some things to  
 15 David Shapiro.  
 16 Q You show it to anyone else?  
 17 A Counsel reviewed it.  
 18 Q Anyone from AGC or --  
 19 A ACG.  
 20 Q -- ACG or FGIC comment on the drafts?  
 21 A No one from those two agencies.  
 22 Q Did you show anyone from those two  
 23 agencies any drafts of your report at all?  
 24 A No.  
 25 Q Did your conclusions of the value of the

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1 DIA collection change between drafts?  
 2 A No.  
 3 Q Were you ever a member of the Appraisers  
 4 Association of America?  
 5 A I was.  
 6 Q Are you now?  
 7 A No.  
 8 Q When did you stop being a member of the  
 9 Appraisers Association of America?  
 10 A I was a member before I became executive  
 11 director. In about, I guess, two or three  
 12 years into my position as executive director, I  
 13 dropped membership.  
 14 Q Why?  
 15 A There was no need to retain any  
 16 membership.  
 17 Q Why not?  
 18 A Why?  
 19 Because I was running the organization. I  
 20 had published, at that point, quite a lot on  
 21 it, on appraising. I was recognized as an  
 22 authority. I did not need to retain my  
 23 membership to maintain my credibility as an  
 24 appraiser.  
 25 Q And you're not an appraiser of the AAA

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1 now?  
 2 A I'm not a member, you mean?  
 3 Q Sorry.  
 4 You're not a member of the Appraisers  
 5 Association of America now?  
 6 A I'm not.  
 7 Q And you're not a certified appraiser of  
 8 the Appraisers Association of America?  
 9 A Of the Appraisers Association of America?  
 10 Q Yes.  
 11 A No, I'm not a member.  
 12 Q Were you elected to be the executive  
 13 director of the Appraisers Association of  
 14 America?  
 15 A Executive directors positions are  
 16 generally not subject to election. I was  
 17 chosen by the board of directors.  
 18 Q And that was a paid position, correct?  
 19 A Yes.  
 20 Q You were working in the administration of  
 21 the AAA; is that right?  
 22 A Among other things.  
 23 Q Why did you leave that position?  
 24 A Well, I had been in the position for 21  
 25 years, and I didn't want to die in the job, and

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1 I was ready for a change, so I resigned.  
 2 Q Were you asked to leave the position as  
 3 executive director?  
 4 A No, I was not.  
 5 Q Any conflicts between you and anyone else  
 6 at the Appraisers Association of America?  
 7 A Well, there always, in any organization,  
 8 differences of opinion.  
 9 Q Were you ever accused by anyone at the  
 10 Appraisers Association of America of violating  
 11 any rules?  
 12 A No.  
 13 Q Accused of violating any laws?  
 14 A Any?  
 15 Q Laws.  
 16 A Laws?  
 17 Q Yes, of the United States.  
 18 A No.  
 19 Q Were you ever accused in conjunction with  
 20 your role as executive director of the  
 21 Appraisers Association of America of funneling  
 22 appraisals to yourself?  
 23 A Was I accused of doing that?  
 24 Q Yes.  
 25 A No.



<p style="text-align: right;">Page 158</p> <p>1 Q At VWA do you provide investment advice to                  2 clients regarding the purchase or sale of art?                  3 A We provide consulting services.                  4 Q And do you ever provide investment advice                  5 to clients regarding the purchase or sale of                  6 art?                  7 A Part of consulting services is advising                  8 clients whether one thinks the art may                  9 appreciate or not appreciate over time.                  10 Q In what percentage of VWA's business is                  11 devoted to advising clients regarding the                  12 purchase or sale of art?                  13 A I'm sorry. I didn't understand that.                  14 Q What percentage of VWA's business is                  15 devoted to providing investment advice to                  16 clients regarding the purchase or sale of art?                  17 A Well, I wouldn't call it investment                  18 advice, but in -- advice on the sale and                  19 purchase of works of art, I'd say about                  20 25 percent.                  21 Q Okay. Let's take a step back.                  22 Do you ever give provide investment advice                  23 to clients regarding the purchase or sale of                  24 art?                  25 A Again, investment advice makes one sound</p>	<p style="text-align: right;">Page 160</p> <p>1 Q When's the last time you actually worked                  2 at an auction house?                  3 A Let me just think. I'll give you an exact                  4 month.                  5 December 2013.                  6 Q And what did you do with regard to the                  7 auction house in that engagement?                  8 A I curated sales and I reviewed the catalog                  9 information at auction.                  10 Q Which house was that?                  11 A It's a company in Germany and United                  12 States at the moment called "Auctionata."                  13 THE WITNESS: Do you want me to spell                  14 that?                  15 THE COURT REPORTER: Mm-hmm.                  16 THE WITNESS: I knew you would.                  17 Okay. A-U-C-T-I-O-N-A-T-A.                  18 THE COURT REPORTER: Thank you.                  19 BY MR. ABEL:                  20 Q And prior to working at Auctionata, when                  21 was the last time before that that you worked                  22 for an auction house?                  23 A Several decades before that.                  24 Q 1982?                  25 A Yes.</p>
<p style="text-align: right;">Page 159</p> <p>1 like an investment counselor.                  2 I provide advice, whether I think it may                  3 be a good purchase or a not so good purchase.                  4 Then the client can do with it what he wants.                  5 But whether this is considered to be                  6 "investment advice," I don't think I would                  7 characterize it that way.                  8 Q What percentage of VWA's business is                  9 related to providing appraisals for the purpose                  10 of determining how much a piece of art work                  11 would sell at auction?                  12 A Would sell at auction. If auction were to                  13 be considered to be an appropriate venue of                  14 sale, it's an auction that one would include in                  15 appraisal reports.                  16 As I say, every appraisal report has its                  17 unique profile. So as far as percentage goes,                  18 I don't know if I can quantify it at this                  19 point; possibly 30 percent, 40 percent. I                  20 really don't know. It's a valuation                  21 consideration prevalent to all appraisal                  22 reports, basically.                  23 Q Am I correct the last time you actually                  24 worked in an auction house was is 1982?                  25 A You're incorrect.</p>	<p style="text-align: right;">Page 161</p> <p>1 Q How long were you working at Auctionata?                  2 A Well, two, three years. I still am.                  3 Q What percentage of VWA's business have                  4 related to providing insurance -- appraisals                  5 for insurance related engagements?                  6 A Again, I don't break it down necessarily                  7 in percentages. But if I were to estimate, I'd                  8 say, again, 20, 25 percent. As I say, I don't                  9 do studies of percentages of what we do.                  10 Q Does VWA ever sell property directly for                  11 clients?                  12 A Do we broker sales?                  13 Q Yes.                  14 A Upon occasion.                  15 Q How frequently?                  16 A Not that frequently.                  17 Q Have you had any discussions with anyone                  18 about brokering any portions of the DIA's                  19 collection?                  20 A None.                  21 Q Would you do so?                  22 A Would I broker the collection?                  23 Q Would you broker any portion of the                  24 collection?                  25 A Not while I'm appraising it.</p>

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1 Q Are you done appraising it?  
 2 A When the case is over I'll be done.  
 3 Q Are you still appraising the DIA  
 4 collection after the submission of your  
 5 July 25, 2014 report?  
 6 A We are.  
 7 Q What are you still doing?  
 8 A We're looking at other -- other specific  
 9 items. We are reviewing values that were put  
 10 on them. And we are in the continual process  
 11 of updating your appraisal report.  
 12 Q Have you submitted a supplement to your  
 13 report in this matter?  
 14 A We have not.  
 15 Q Do you intend to?  
 16 A That depends on counsel.  
 17 Q Do you believe that there are any  
 18 inaccuracies in your report that need to be  
 19 supplemented?  
 20 A There may be a few corrections due to  
 21 typos, things of that sort, or  
 22 mistranscriptions, but . . .  
 23 Q What are you aware of, in terms of errors  
 24 in your report?  
 25 A Well, if you turn to -- it's hard for me

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1 to maneuver this.  
 2 Q And just be clear, when we're talking  
 3 about errors in your report, I'm not referring  
 4 to spelling errors or grammar errors.  
 5 A I understand.  
 6 If you turn to -- the pages are not sure  
 7 numbered, unfortunately.  
 8 But if you turn to attachment -- Step 2,  
 9 the Attachment J, as in John, you can -- the  
 10 first -- the first five entries. That's Andy  
 11 Warhol, Armando Morales, Donald Baechler,  
 12 Friedrich Hundertwasser, up to there. It says  
 13 one, two, three, four. These four have been --  
 14 are a subject to mistranscriptions.  
 15 Q How were they mistranscriptions?  
 16 A The Andy Warhol portrait, "Self Portrait"  
 17 was appraised individually. So it shouldn't be  
 18 included on the list of the 616. The Morales,  
 19 The Unknown, and The Baechler have  
 20 mistranscribed values that are much too high.  
 21 Q And how did you determine that they were  
 22 much too high?  
 23 A In reviewing the transcriptions that were  
 24 made.  
 25 Q Have you looked at every transcription

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1 made in your report?  
 2 A I think we have. I think we have.  
 3 Q You've now gone through everything for  
 4 Steps 1, Steps 2, Steps 3 and Steps 4 to make  
 5 sure that there are no mistranscriptions?  
 6 A To the best of our ability, at this  
 7 moment, yes.  
 8 Q In what degree were they mistranscribed?  
 9 A What do you mean by "degree"?  
 10 Q How much should they be?  
 11 A Much lower. The Warhol should be  
 12 eliminated. I think, basically, to correct,  
 13 you can deduct the entire values, because they  
 14 are much lower; they not in the millions.  
 15 They're in, probably the low thousands.  
 16 Q So the Unknown, "Plate" that you have  
 17 listed as \$18 million should be really in the  
 18 thousand-dollar range?  
 19 A Sure. Correct.  
 20 Q Do you know exactly how much that should  
 21 be?  
 22 A No, I haven't. I'd have to look at the  
 23 records. But it's just the magnitude of error  
 24 is significant.  
 25 Q Who valued an Unknown, "Plate" at \$18

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1 million?  
 2 A This was -- if you noticed, Step 2 is --  
 3 refers to -- and I'll quote directly in the  
 4 report, the high value by the independent third  
 5 parties. So these were the averages. And for  
 6 some reason the value was mistranscribed.  
 7 Q And who did the transcription of those  
 8 values?  
 9 A Rob Leeds at Silar. I'm sorry, or Silar,  
 10 in general. I'm not sure if he did it  
 11 personally.  
 12 Q How many employees does VWA have?  
 13 A We have 10 or 11.  
 14 Q Are they all full-time?  
 15 A No.  
 16 Q How many are full-time?  
 17 A Well, two are close to full-time.  
 18 Q What do you mean "close to full-time"?  
 19 A Meaning they get paid on a per job basis,  
 20 and seem to be working full-time.  
 21 Q And who are they?  
 22 A David Shapiro, who is seated here. And  
 23 Shaun Cooper.  
 24 Q Who are the associates at VWA, other than  
 25 Mr. Cooper and Mr. Shapiro?

<p style="text-align: right;">Page 166</p> <p>1 A Numerous. You can go on to our website.                  2 They are people who we work with on a regular                  3 basis.                  4 Q And are they hired by engagement by VWA?                  5 A They are hired on a per job basis, yes.                  6 Q Do you have any experience in setting an                  7 accession policies at museums?                  8 A I'm not quite sure, what do you mean by                  9 "accession policies"?                  10 Q Do you know what the accession is with                  11 regard to a museum collection?                  12 A Yes, I do.                  13 Q Are you aware that museums have policies                  14 regarding the accession and deaccessioning of                  15 work from their collections?                  16 A I do.                  17 Q Did you have any experience with the                  18 setting of any of those policies at any museum?                  19 A I do not set policy.                  20 Q Do you have experience in determining                  21 works for deaccessioning at a museum?                  22 A I have never determined or made a                  23 recommendation which works should be                  24 deaccessioned.                  25 Q Have you ever had any engagement to</p>	<p style="text-align: right;">Page 168</p> <p>1 collections?                  2 A Not the certificates.                  3 Q And did any of the work that you mentioned                  4 have any role with regard to valuation of                  5 museum collections?                  6 A Yes.                  7 Q What was that?                  8 A Well, work for museums. I worked for --                  9 quite a bit for the Philadelphia Museum of Art                  10 in setting values for insurance purposes or                  11 loan purposes.                  12 Q And when you say "loan," are you referring                  13 to inter-museum loans, not loans to obtain                  14 capital?                  15 A Inter-museum loans, correct.                  16 Q Did you talk to any museum personnel at                  17 any museum in connection with this engagement?                  18 A I did not.                  19 Q Did you talk to anyone at any auction                  20 houses in connection with this engagement?                  21 A I did not.                  22 Q Did you talk to anyone at Christie's or                  23 Sotheby's to see whether they -- those                  24 entities would be willing to sell any portion                  25 of the DIA collection?</p>
<p style="text-align: right;">Page 167</p> <p>1 appraise museum works for deaccessioning?                  2 A No.                  3 Q How do you believe -- sorry. Take a step                  4 back.                  5 Do you believe you have extensive museum                  6 experience?                  7 A I do.                  8 Q How do you believe your museum experience                  9 is relevant to determining the value of the DIA                  10 collection here?                  11 A Very simply. I have worked full-time for                  12 three years, part-time for several years                  13 afterwards, interacted with museum curators,                  14 and basically know cataloging policy, have seen                  15 objects that have been deaccessioned. I've                  16 seen many objects that have been taken into the                  17 collection. And I have a pretty strong                  18 curatorial background. And if you look at my                  19 CV I have a certificate from the Metropolitan                  20 Museum of Art and New York University, offered                  21 jointly, in museum training, which involved                  22 three years full-time work in museums.                  23 Q And did any of that training that you                  24 received or the certificates that you received,                  25 address the issue of valuation of museum</p>	<p style="text-align: right;">Page 169</p> <p>1 A I did not.                  2 Q Have you ever had any involvement with any                  3 museum that was forced to deaccession art                  4 before?                  5 And when I say "forced," I mean                  6 deaccession for purposes other than buying new                  7 art.                  8 A I have not.                  9 Q Are you aware of the American Alliance of                  10 Museums?                  11 A I think it's the American Association of                  12 Museums.                  13 Is that the AAM?                  14 Q That's the AAM.                  15 A I believe it's correctly called the                  16 "American Association of Museums."                  17 Q Are you aware of the AMM's code of ethics?                  18 A Yes.                  19 Q Do you know whether or not DIA is a member                  20 of the AAM?                  21 A I'm assuming that they were.                  22 Q Do you know whether the DIA is subject to                  23 their code of ethics?                  24 A As a member, I believe they would be.                  25 Q Do you know whether it would be a</p>

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1 violation of the AAM's code of ethics for the  
 2 DIA to offer its collection as collateral for a  
 3 loan or to sell its collection?  
 4 A I think it would depend upon the  
 5 circumstances.  
 6 Q Well, are you aware of any standard or  
 7 policy governing the DIA that would allow it to  
 8 deaccession its collection to pay creditors?  
 9 A Only what I can -- what shall we say.  
 10 Only what I can assume, but not  
 11 specifically.  
 12 Q Are you aware of other art museums that  
 13 deaccessioned art to pay operating costs?  
 14 A I am.  
 15 Q What museums are those?  
 16 A The Delaware Art Museum. The North  
 17 Hampton collection in England. Primarily  
 18 recent, but I've certainly been aware of this  
 19 in the past, the National Academy of Design has  
 20 done this.  
 21 Q Were the Maier Museum?  
 22 A The?  
 23 Q Maier Museum? M-A-I-E-R.  
 24 A I'm not aware of the Maier Museum using  
 25 their funding for necessarily paying operating

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1 costs.  
 2 Q Are you aware of any sanctions imposed on  
 3 any museum for deaccessioning art to pay  
 4 operating costs?  
 5 A Yes.  
 6 Q What sanctions are you aware of?  
 7 A The -- I believe the National Academy of  
 8 Design encountered sanctions. I believe the  
 9 Delaware Art Museum has encountered sanctions.  
 10 And I believe the North Hampton collection in  
 11 London has also encountered sanctions.  
 12 Q And what were those sanctions?  
 13 A I think it varied from time to time. I  
 14 haven't been following all the details. I know  
 15 they were sanctioned.  
 16 Q Do you know what impact those sanctions  
 17 had on their ability to operate?  
 18 A I do not.  
 19 Q Do you have any evidence -- sorry.  
 20 With regard to those institutions that you  
 21 mentioned, do you know whether or not the art  
 22 that they sold in association with the  
 23 deaccessioning for which they were sanctioned  
 24 received lower prices at auction?  
 25 A As a result of deaccessioning?

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1 Q Result of sanctions, yes.  
 2 A Am I -- and the question I believe is: Am  
 3 I aware that the -- well, generally speaking,  
 4 the sanctions would take place after the sale.  
 5 Q And was the public aware of the purpose of  
 6 the deaccessioning?  
 7 A I believe so.  
 8 Q Are you aware of whether or not there was  
 9 any impact on the price for which those art  
 10 pieces were sold as a result of the fact that  
 11 they were being deaccessioned for purposes of  
 12 paying operating costs as opposed to buying new  
 13 art?  
 14 A It's my opinion that there was no impact.  
 15 Q And how did you form that opinion?  
 16 A By seeing the prices, by looking at the  
 17 prices realized in the sales, and my knowledge  
 18 of, generally, the art market.  
 19 Q Did you appraise those pieces of art in  
 20 question?  
 21 A No, I did not.  
 22 (Deposition Exhibit 6, Printout From the  
 23 American Alliance Museum's Website, marked for  
 24 identification as of this date.)  
 25

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1 BY MR. ABEL:  
 2 Q You have 6.  
 3 I'm showing you a document marked  
 4 Deposition Exhibit 6.  
 5 A Mm-hmm.  
 6 Q You ever seen this document before?  
 7 A No, I haven't.  
 8 MR. ABEL: Well, let's, for the record,  
 9 this is a printout from a document on the  
 10 American Alliance Museum's website.  
 11 BY MR. ABEL:  
 12 Q Are you aware of the American Alliance  
 13 Museums?  
 14 A Yes.  
 15 Q And you said before that one of the  
 16 entities that was sanctioned was the Delaware  
 17 Art Museum?  
 18 A Yes.  
 19 Q To the extent that this is a true and  
 20 accurate document, would you agree with the  
 21 statement that "the Delaware Art Museum's  
 22 decision to sell certain pieces of art in  
 23 association with the deaccessioning for  
 24 operating costs threatens to erode the trust  
 25 museums have earned from the American public

<p style="text-align: right;">Page 174</p> <p>1 for more than two centuries"?</p> <p>2 MR. PEREZ: Object to the form of the</p> <p>3 question. He testified he hadn't seen this</p> <p>4 document before.</p> <p>5 MR. ABEL: I'm asking about the statement,</p> <p>6 not about the document itself.</p> <p>7 A So the question is am I aware of what it</p> <p>8 says?</p> <p>9 BY MR. ABEL:</p> <p>10 Q No.</p> <p>11 My question is: Would you agree that "the</p> <p>12 Delaware Art Museum's decision to sell or</p> <p>13 deaccession art pieces in conjunction with</p> <p>14 paying its debts threatens to erode the trust</p> <p>15 museums have earned from the American public</p> <p>16 over more than two centuries"?</p> <p>17 MR. PEREZ: Same objection.</p> <p>18 A I'm aware that this is an opinion issued</p> <p>19 by the American Alliance Museums.</p> <p>20 BY MR. ABEL:</p> <p>21 Q I'm asking you whether you agree with the</p> <p>22 opinion, sir, not what it is.</p> <p>23 A I'm not sure I wholeheartedly agree.</p> <p>24 Q Why don't you agree?</p> <p>25 A What?</p>	<p style="text-align: right;">Page 176</p> <p>1 regard to the impact on the evaluation of a</p> <p>2 collection held by a museum as a result of a</p> <p>3 forced deaccessioning?</p> <p>4 A I haven't read any articles about the</p> <p>5 impact of -- are you asking me have I read</p> <p>6 anything about the value of the objects sold at</p> <p>7 auction that were impacted by potential</p> <p>8 sanctions or condemnation by the American</p> <p>9 Alliance Museum; is that your question?</p> <p>10 Q Yes.</p> <p>11 A My answer is no.</p> <p>12 Q You mentioned museum provenance in your</p> <p>13 report, correct?</p> <p>14 A I did.</p> <p>15 Q And you believe that works sold from a</p> <p>16 museum may have added value?</p> <p>17 A I do.</p> <p>18 Q Did you perform any analysis of the market</p> <p>19 to confirm whether that assumption was correct?</p> <p>20 A I did.</p> <p>21 Q What did you do?</p> <p>22 A We looked at quite a number of sales of</p> <p>23 deaccessioned stuff -- not deaccessioned stuff,</p> <p>24 that's the wrong word. Of deaccessioned</p> <p>25 property from a variety of museums, all of</p>
<p style="text-align: right;">Page 175</p> <p>1 Q Why don't you agree?</p> <p>2 A Well, this is a very broad statement, that</p> <p>3 it will erode the trust.</p> <p>4 I mean, I think many people would be</p> <p>5 disturbed by it. But whether it erodes the</p> <p>6 trust, I'm not 100 percent sure. I think it</p> <p>7 might be a very strong statement, and it's not</p> <p>8 measured.</p> <p>9 Q It's not a measurable statement, in your</p> <p>10 opinion?</p> <p>11 A Well, the statement is not measured. It's</p> <p>12 a strong statement, and I don't know whether</p> <p>13 the trust has been eroded.</p> <p>14 I think it's something that would upset</p> <p>15 people, but whether it's eroded, I don't know.</p> <p>16 Q Well, have you done anything to determine</p> <p>17 the impact of a forced deaccessioning on a</p> <p>18 museum before?</p> <p>19 A What do you mean have I done anything?</p> <p>20 Q Have you performed any analysis, read any</p> <p>21 books, done any studies as to the impact on</p> <p>22 forced deaccessioning on a value of a museum</p> <p>23 collection before?</p> <p>24 A I've just read articles.</p> <p>25 Q And what articles have you read with</p>	<p style="text-align: right;">Page 177</p> <p>1 which are listed in our appraisal report, and</p> <p>2 came to the conclusion, as stated in the</p> <p>3 report, that the museum provenance basically</p> <p>4 adds to the value of the objects offered for</p> <p>5 sale.</p> <p>6 Q And am I correct that none of those</p> <p>7 examples that you utilized in conjunction with</p> <p>8 forming your opinion in this case dealt with a</p> <p>9 deaccession from a museum collection in the</p> <p>10 context of a sale for operating costs or to pay</p> <p>11 lenders?</p> <p>12 A Yes, to the best of my knowledge.</p> <p>13 Q Do you believe that the sale of the DIA</p> <p>14 collection would be unprecedented in scope?</p> <p>15 A It probably would be.</p> <p>16 Q There's never been a sale like this before</p> <p>17 of its collection, assuming it happens?</p> <p>18 A Well, what type of sale are you talking</p> <p>19 about?</p> <p>20 Q Well, if the DIA collection was sold in</p> <p>21 toto, there was never -- in the history of the</p> <p>22 sale of art, you're not aware of another time</p> <p>23 period where such a sale was -- where such a</p> <p>24 sale occurred?</p> <p>25 A Correct. That's correct.</p>

<p style="text-align: right;">Page 178</p> <p>1 Q The sale of the DIA collection would be                  2 unique, in your opinion?                  3 A In that context, yes.                  4 Q Am I correct that there are different                  5 kinds of arts at the DIA?                  6 A There are.                  7 Q It's a mixed collection?                  8 A There are.                  9 Q Do you know whether all the works of the                  10 DIA were of the same quality?                  11 A Is the question: Am I aware whether the                  12 works collected by the DIA are all uniformly of                  13 the same quality?                  14 Q Yes.                  15 A And the answer is, they are not.                  16 Q The DIA collection has uneven quality,                  17 correct?                  18 A It has a varied quality. I don't know if                  19 I'd use the word "uneven."                  20 Q Before the bankruptcy of the City of                  21 Detroit and the contemplated liquidation of the                  22 DIA collection, are you aware of a liquidation                  23 of such a collection ever being considered in                  24 any treatise or publication?                  25 MR. PEREZ: Object to the form of the</p>	<p style="text-align: right;">Page 180</p> <p>1 A I am not.                  2 Q What's the largest collection you've ever                  3 appraised by value?                  4 A About \$300 million.                  5 Q And how many works of art comprised that                  6 collection?                  7 A That one, 20,000.                  8 Q And what was the second largest collection                  9 you've ever valued by volume?                  10 MR. PEREZ: Object to the form of the                  11 question. Assumes facts not in evidence.                  12 A I think we're now in the process of                  13 appraising a collection that is maybe 15,                  14 19,000 works of art.                  15 BY MR. ABEL:                  16 Q And how long have you spent on that                  17 engagement?                  18 A Well, it's something that is being done                  19 over time. So we've been spending about, on                  20 and off, for various reasons, about four                  21 months.                  22 Q And how long do you expect to take on that                  23 engagement?                  24 A That depends on a variety of factors.                  25 Q What factors?</p>
<p style="text-align: right;">Page 179</p> <p>1 question. Assumes facts not in evidence.                  2 A I'm not quite sure. It's a composite                  3 question anyway.                  4 What exactly is the question? I'm not                  5 sure.                  6 BY MR. ABEL:                  7 Q Sure.                  8 Are you aware of any treatises or                  9 publications that contemplate the methodology                  10 to be used in the liquidation of a collection                  11 the size of the DIA's?                  12 A I'm not aware of any.                  13 Q Are you aware of any discussions or                  14 courses in which the liquidation of a DIA                  15 collection was at issue?                  16 MR. PEREZ: Object to the form of the                  17 question.                  18 BY MR. ABEL:                  19 Q Let me take a step back. Let me rephrase.                  20 Are you aware of any courses or panel                  21 discussions where the orderly liquidation of                  22 the DIA collection was at issue?                  23 A You're talking about something in an                  24 academic setting?                  25 Q Yes.</p>	<p style="text-align: right;">Page 181</p> <p>1 A Availability of the art; groupings of the                  2 art; and other factors that I can't determine                  3 at this particular point.                  4 Q What kind of valuation are you performing                  5 for that 15 to 19,000 piece collection?                  6 A The value will be most likely fair market                  7 value.                  8 Q And why fair market value as opposed to                  9 marketable cash value?                  10 A Again, I really feel uncomfortable for a                  11 variety of reasons talking about the valuation                  12 specifics of this collection. And, indeed, it                  13 is subject to strict confidentiality with the                  14 client.                  15 Q Did you use the same methodology you                  16 utilized with regard to the valuation of the                  17 DIA collection for that -- to value that                  18 collection 15 to 19,000 items?                  19 A It's an ongoing situation, and again I                  20 feel compelled not to answer, due to the                  21 confidentiality agreement.                  22 Q Prior to this engagement and the Hurst                  23 engagement, have you ever performed any work                  24 for ACG or Ian Peck?                  25 MR. PEREZ: Objection to the form of the</p>

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<p style="text-align: right;">Page 182</p> <p>1 question. Assumes facts not in evidence.                  2 A Directly?                  3 BY MR. ABEL:                  4 Q Well, have you ever been engaged by ACG or                  5 Ian Peck to perform an appraisal?                  6 A No.                  7 Prior to the two engagements you cited?                  8 Q Other than those two engagements, have you                  9 ever been engaged by ACG or Ian Peck to perform                  10 an appraisal?                  11 A I have not.                  12 Q Are you aware of ACG's reputation in the                  13 art industry?                  14 MR. PEREZ: Object to the form of the                  15 question.                  16 BY MR. ABEL:                  17 Q Well, let's take a step back.                  18 Does ACG have a reputation in the                  19 industry, that you're aware of?                  20 A Yes.                  21 Q And what is that reputation?                  22 A Very straightforward. Relatively good                  23 reputation.                  24 Q You believe that ACG is respected in the                  25 art industry?</p>	<p style="text-align: right;">Page 184</p> <p>1 A That is an auction house in China.                  2 Q Anything positive or negative about its                  3 reputation in the art market, that you're aware                  4 of?                  5 A Nothing of great substance. There have                  6 been some aspersions in the press which may or                  7 may not be true. But basically it has a                  8 reputation of being a venue of sale in China.                  9 Q Have you ever used the Poly International                  10 Auction?                  11 A I have not.                  12 Q Have you ever heard of Catalyst or Cat                  13 List Acquisition's LLC?                  14 A No, other than in the context of this                  15 report.                  16 Q You visited the DIA in April 2014; is that                  17 correct?                  18 A That is correct.                  19 Q Why?                  20 A Well, I was invited by the Chinese                  21 government to lecture in China. They were                  22 paying for my way. I wanted to fly on Delta                  23 Airlines. There was no direct flight from New                  24 York to Beijing. I had a choice of either                  25 flying to Nurato in Japan or flying through</p>
<p style="text-align: right;">Page 183</p> <p>1 A Definitely.                  2 Q Are you aware of any lawsuits involving                  3 ACG?                  4 A I am.                  5 Q What lawsuits were those?                  6 A I believe that there was -- well, I                  7 already testified that in the Hurst matter I                  8 was an expert witness in a lawsuit. And that I                  9 believe, I haven't examined in detail, there                  10 was a lawsuit involving the foreclosure of a                  11 loan to Annie Leibovitz, the photographer.                  12 Q You ever advised a client to get a loan                  13 from ACG or Ian Peck?                  14 A No.                  15 Q Do you know anything about ACG's lending                  16 practices, generally?                  17 A Not really.                  18 Q You ever heard of Poly International                  19 Auction?                  20 A Yes.                  21 Q Does it have a reputation in the art                  22 market?                  23 A I think it has a relatively new                  24 reputation.                  25 Q And what is that reputation?</p>	<p style="text-align: right;">Page 185</p> <p>1 Detroit. I thought this was a great                  2 opportunity to see the DIA, which I had never                  3 seen before, so I paid out of my own pocket an                  4 extra night in Detroit and spent a considerable                  5 amount of time at the DIA.                  6 Q How long did you spend there?                  7 A About eight hours.                  8 Q Did you talk to anyone at the DIA during                  9 that trip?                  10 A Other than the ticket taker in the garage,                  11 and the guards and the woman who sold me lunch,                  12 no.                  13 Q Did anyone else come with you on that trip                  14 to the DIA?                  15 A No, I was alone.                  16 Q Did you perform your appraisal in this                  17 case under what you believed to be highly                  18 limiting conditions?                  19 A I set forth in the appraisal report the                  20 limiting conditions. I did not use the word                  21 "highly limited."                  22 Q Let's take a look at your report.                  23 Exhibit 3, Page 18. In the middle of page, you                  24 see the paragraph that starts "By nature of the                  25 assignment"?</p>

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1 A Mm-hmm. I do. I'm sorry.  
 2 Q It goes on to say "The VWA appraisal has  
 3 set about to value of the entire collection of  
 4 the DIA operating under highly limiting  
 5 conditions."  
 6 Do you see that?  
 7 A Yes, I do.  
 8 Q Would you agree that you performed your  
 9 work appraising the DIA collection under highly  
 10 limiting conditions?  
 11 A In that sense, yes.  
 12 Q You didn't review the artwork in person at  
 13 the DIA except for your visit in April 2014?  
 14 A Prior to the issuance of this report, no.  
 15 Q After the issuance of the report did you  
 16 visit the DIA?  
 17 A I did.  
 18 Q When was that?  
 19 A A few days ago.  
 20 Q And why did you visit the DIA?  
 21 A Because I wanted to verify and bring with  
 22 me those members of my team who are either  
 23 associated with it or would be possibly  
 24 associated with it in the future to review the  
 25 collection.

1 Q Why didn't you review the collection in  
 2 person prior to your July 25, 2014 report?  
 3 A We had an extremely limited amount of time  
 4 to do this. I couldn't write the report, do  
 5 the research and visit the DIA at the same  
 6 time.  
 7 Q You didn't visit -- you didn't decide it  
 8 was necessary to visit the DIA between May and  
 9 July of 2015 to see it in person?  
 10 A Not for the purposes of issuing this  
 11 report.  
 12 Q Do you intend for your associates who you  
 13 brought with you to the DIA for the visit,  
 14 after your July 25th report to testify in this  
 15 case?  
 16 A No. That would be a decision of counsel.  
 17 Q Do you understand that they will be  
 18 testifying in this case?  
 19 A I have no such understanding.  
 20 Q Which associates did you bring with you to  
 21 Detroit?  
 22 A David Shapiro and another associate who is  
 23 not mentioned in report named -- and I'll have  
 24 to spell this for you.  
 25 Frans, F-R-A-N-S. Pijnenburg,

1 P-I-J-N-E-N-B-U-R-G.  
 2 Q Am I correct that you refer to your report  
 3 as preliminary?  
 4 A You are correct.  
 5 Q Does USPAP provide for the issuance of  
 6 preliminary reports?  
 7 A It does.  
 8 Q What does it say about preliminary  
 9 reports?  
 10 A It doesn't define it as such. But the  
 11 appraiser, as I testified already, is given a  
 12 great deal of latitude in the appraisal report  
 13 issuance process.  
 14 Q Are there any opinions that you formed  
 15 that are not contained in your report with  
 16 regard to the DIA collection?  
 17 A What type of opinions are you referring  
 18 to?  
 19 Q Have you formed any opinions with regard  
 20 to the value of the DIA collection that aren't  
 21 contained in your report?  
 22 A The report contains all of our opinions of  
 23 value as of this moment.  
 24 Q Have you been asked to provide any other  
 25 opinions in this case that aren't contained in

1 your report?  
 2 A No.  
 3 Q Have you identified all the facts that you  
 4 relied upon in your report?  
 5 A In the -- yes.  
 6 Q And have you identified all the documents  
 7 that you relied upon in your report?  
 8 A At the moment, yes.  
 9 Q Have you done all the work that you  
 10 believe is required to reach the opinions that  
 11 you've expressed in your report?  
 12 A I did.  
 13 Q Are all the assumptions that you made in  
 14 forming your opinions identified in your  
 15 report?  
 16 A Yes.  
 17 MR. ABEL: Now is probably a good time to  
 18 break for lunch.  
 19 THE VIDEOGRAPHER: Go off the record. The  
 20 time is 1:02.  
 21 (Luncheon Recess: 1:02 p.m.)  
 22 A F T E R N O O N S E S S I O N  
 23 (Time noted: 1:39 p.m.)  
 24 THE VIDEOGRAPHER: Go back on the record.  
 25 The time is 1:39.

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<p style="text-align: right;">Page 190</p> <p>1 V I C T O R W I E N E R, resumed and                  2 testified as follows:                  3 EXAMINATION BY (Cont'd.)                  4 MR. ABEL:                  5 Q Good afternoon, Mr. Wiener, hope you had a                  6 good lunch.                  7 A Yes, thank you.                  8 Q Am I correct that you worked on this                  9 engagement with a team of people?                  10 A You are correct.                  11 Q And what was your role in that engagement?                  12 A I was in charge of a team.                  13 Q What does that mean?                  14 A That means I selected the members of the                  15 team. I reviewed all the work. I reviewed                  16 their assignments. I discussed with them                  17 aspects of the assignment. I accept full                  18 responsibility for the appraisal report.                  19 Q And what did you tell each member of the                  20 team about what the assignment involved?                  21 A I told the team members that we were --                  22 that they were to appraise selected works from                  23 are the DIA collection, the valuation parameter                  24 was marketable cash value. The -- we had a                  25 limited amount of time in which to do it, so do</p>	<p style="text-align: right;">Page 192</p> <p>1 with accuracy, and that we would then be taking                  2 average values.                  3 Q And who came up with the idea for the                  4 methodology detailed in Step 2?                  5 A I think we -- it was -- of course, I had                  6 the ultimate decision-making in it. But                  7 basically the methodology was done in                  8 consultation with Silar and with David Shapiro                  9 and with Shaun Cooper.                  10 Q Who came up with that idea for that                  11 methodology originally?                  12 A I think we discussed -- this came out of                  13 consultation. All four of us sat down and                  14 discussed how we would do -- how we would                  15 handle it, possibly me. I don't think that                  16 methodology has any "author" attached to it.                  17 It's, again, a team effort, as I say                  18 repeatedly in the report.                  19 Q But you don't know who came up with the                  20 idea?                  21 A As I told you it was a team effort. I                  22 don't know who uttered it the first time.                  23 Q How about Step 3; who came up with the                  24 methodology detailed in Step 3?                  25 A Again, the answer is the same as before,</p>
<p style="text-align: right;">Page 191</p> <p>1 it as quickly as possible.                  2 Q Did you talk to any of the team members                  3 regarding the methodology that you would be                  4 utilizing to determine the marketable cash                  5 value for the DIA collection?                  6 A All of my team members are extremely                  7 experienced, and they all know what marketable                  8 cash value means and they know how to apply it.                  9 I don't think anyone had any questions                  10 about that.                  11 Q Let's break it down.                  12 Did you talk to any of your team members                  13 about the methodology under Step 2 of the                  14 methodology indicated in your appraisal report?                  15 A Hang on.                  16 Yes.                  17 Q Who did you talk to about the methodology                  18 in Step 2?                  19 A Primarily David Shapiro, and Shaun Cooper,                  20 and Rob Leeds and his associates at Silar.                  21 Q And what did you talk with them about that                  22 Step 2 methodology?                  23 A That we would be reviewing these works.                  24 We couldn't appraise them individually, and                  25 that they should be identified, put together</p>	<p style="text-align: right;">Page 193</p> <p>1 it was a team effort. We all came up with it.                  2 The applications went to the technical people.                  3 And but the methodology involved was certainly                  4 my decision and the others, together, thinking                  5 that this was an appropriate thing to do.                  6 Q And did anyone on your team other than                  7 David Shapiro -- who is Shaun?                  8 A Cooper.                  9 Q Shaun Cooper.                  10 And who was the third person?                  11 A Rob Leeds and his associates at Silar.                  12 Q Did anyone except for David, Shaun and Rob                  13 provide insight into the methodology in Step 3?                  14 A In Step 3, not that I can recall.                  15 Q What about Step 4, who came up with the                  16 methodology in Step 4?                  17 A That was primarily me, I think. But I                  18 think, everybody is again -- I'm saying like a                  19 broken record; everybody was part of the team                  20 and we all discussed this.                  21 Q Did anyone on your team ever criticize or                  22 say we can't use Step 2, 3 or 4?                  23 A Not that I recall.                  24 Q What are David's Shapiro's qualifications                  25 for doing a valuation of a 60,000 piece art</p>

<p style="text-align: right;">Page 194</p> <p>1 collection?</p> <p>2 A David Shapiro, as stated in the report, is</p> <p>3 an appraiser of various works of arts. He also</p> <p>4 is extremely knowledgeable about important</p> <p>5 museum pieces, since he has edited numerous</p> <p>6 textbooks concerning museum collections, and he</p> <p>7 has taught museum collections at various</p> <p>8 institutions of higher learning.</p> <p>9 Q What is the largest collection that</p> <p>10 David Shapiro has ever valued?</p> <p>11 A I think this is the largest.</p> <p>12 Q And after this collection, what's the</p> <p>13 second largest that he's ever valued?</p> <p>14 A Well, we're in the process of valuing</p> <p>15 another collection of about, I think 25,000</p> <p>16 works of art.</p> <p>17 Q Before this collection, what was the</p> <p>18 largest collection he's ever valued in terms of</p> <p>19 art?</p> <p>20 A He worked with us on a collection of</p> <p>21 20,000 works of art.</p> <p>22 Q And did he come up with the methodology</p> <p>23 there for the valuation?</p> <p>24 A No, the methodology was decided in</p> <p>25 consultation by me and the client and the --</p>	<p style="text-align: right;">Page 196</p> <p>1 With -- go back to your question.</p> <p>2 With every item in the DIA collection, are</p> <p>3 you referring to all 60,000 items?</p> <p>4 Q Yes.</p> <p>5 A The answer to that question is no.</p> <p>6 Q Did every member of the team come up with</p> <p>7 their own opinion of value as to the 387 units</p> <p>8 detailed in Step 1 of your valuation?</p> <p>9 A Various members of the team came up with</p> <p>10 preliminary values, preliminary ideas, which</p> <p>11 was then reviewed by the team.</p> <p>12 Q Did they present those ideas in writing?</p> <p>13 A Some did; some didn't.</p> <p>14 Q And for those that didn't, did you do</p> <p>15 anything to determine whether or not the</p> <p>16 information they were relying upon to form</p> <p>17 their opinions of values of work was correct?</p> <p>18 A We did.</p> <p>19 Q What did you do?</p> <p>20 A We did some of -- the team did some of its</p> <p>21 own review and corroboration of what was</p> <p>22 transmitted to us, either in writing or</p> <p>23 telephonically.</p> <p>24 Q When you were in consultation, were there</p> <p>25 any examples you can point to where you made</p>
<p style="text-align: right;">Page 195</p> <p>1 well, fulfillment of the -- take that back.</p> <p>2 The fulfillment of the assignment was our</p> <p>3 decision. We then proposed it to the client to</p> <p>4 make sure this was in keeping with their</p> <p>5 expectations. But the total methodology was</p> <p>6 our decision.</p> <p>7 Q Let's break down the process again a</p> <p>8 little bit in terms of determining what this</p> <p>9 consultation actually involved.</p> <p>10 Before you met in consultation with the</p> <p>11 other people on your team, did you have them</p> <p>12 perform their own analyses and come up with</p> <p>13 their own conclusions?</p> <p>14 A In what sense?</p> <p>15 Q Did you ask them to come up with any</p> <p>16 conclusions that they were going to present to</p> <p>17 the team with regard to the valuation of any</p> <p>18 piece of the DIA collection?</p> <p>19 A Well, all members of the team, not only</p> <p>20 the ones who decided on the methodology, came</p> <p>21 up with their suggested individual values.</p> <p>22 Q And did each member of the team come up</p> <p>23 with suggested individual values for every item</p> <p>24 in the DIA collection?</p> <p>25 A We started with -- well, start again.</p>	<p style="text-align: right;">Page 197</p> <p>1 adjustments to the opinions of values that were</p> <p>2 presented by the independent appraisers on the</p> <p>3 team to the committee?</p> <p>4 A I can't recall. We looked and relooked</p> <p>5 many times at the individual values.</p> <p>6 So specifically, I'd have to go back to</p> <p>7 each of the 387 items and talk about it and</p> <p>8 review.</p> <p>9 But ultimately everything got discussed.</p> <p>10 Q Did you form any independent valuations,</p> <p>11 other than through this committee process, as</p> <p>12 to the value of any specific pieces of art of</p> <p>13 the DIA collection?</p> <p>14 A It was always -- I did, but it was always</p> <p>15 in conjunction with the team. That's how we</p> <p>16 work.</p> <p>17 Q Well, what did you do independently in</p> <p>18 conjunction with this engagement?</p> <p>19 A I -- every value, I'll repeat.</p> <p>20 Every value that appears in the report was</p> <p>21 looked at by me in consultation with the team.</p> <p>22 Q Were you ever the one who generated the</p> <p>23 first opinion of value that was presented to</p> <p>24 the team for consideration, with regard to any</p> <p>25 of the pieces in the DIA collection?</p>

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1 A I can't recall because it's all part of a  
 2 team process. But I certainly was there when  
 3 the individual values were first determined.  
 4 **Q Did you doublecheck to make sure any of**  
 5 **the appraisers who were working for you did**  
 6 **a -- performed accurately or performed an**  
 7 **appraisal that was methodologically correct?**  
 8 A We did.  
 9 **Q And how did you do that?**  
 10 A We spot checked values. We more than spot  
 11 checked the individual values. We looked at  
 12 all the backup information and discussed it.  
 13 **Q For all 387 pieces?**  
 14 A Correct.  
 15 **Q What about for the other items in the**  
 16 **collection, other than the 387 --**  
 17 A Well, the methodology that we used for  
 18 these other items is detailed in the report,  
 19 and we had discussed it. But we can do it  
 20 again if you'd like.  
 21 **Q What's the average salary for an**  
 22 **appraiser, generally, at the VWA?**  
 23 A I don't know. I haven't done average  
 24 salaries. Everyone works on an ad hoc basis.  
 25 I really don't -- I can't answer that question

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1 at this point.  
 2 I will let you know at the end of the  
 3 year. But I can't do it now.  
 4 **Q How about last year?**  
 5 A I haven't -- again, I haven't reviewed it.  
 6 We did your taxes and it is there.  
 7 I mean, really, you know, different people  
 8 get paid for the amount of work that they've  
 9 done in different ways, and it's there.  
 10 **Q You wrote in your report that you**  
 11 **consulted dealers materials similar to works of**  
 12 **art contained in the subject property; is that**  
 13 **right?**  
 14 A That is correct.  
 15 **Q Who did you contact?**  
 16 A I can't tell you. It's a very sensitive  
 17 assignment. No dealer wanted to be identified  
 18 as a source for giving me values.  
 19 **Q Why not?**  
 20 A Why?  
 21 Because many dealers have relationship  
 22 with the DIA, and they would feel uncomfortable  
 23 having their names associated with the report.  
 24 **Q Why is that?**  
 25 A They felt that it might impact on their

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1 future dealings with the DIA.  
 2 **Q Do you have any sense of why that would**  
 3 **be?**  
 4 MR. PEREZ: Object to the form of the  
 5 question. Asked and answered.  
 6 A Do I have any sense of why it might be?  
 7 BY MR. ABEL:  
 8 **Q Yes.**  
 9 A The answer is yes.  
 10 **Q Why is that?**  
 11 A Like I said before, the dealers, it may  
 12 affect their business dealing.  
 13 **Q And how would it impact their business**  
 14 **dealing?**  
 15 MR. PEREZ: Object to the form of the  
 16 question. Asked and answered.  
 17 THE WITNESS: I can answer?  
 18 MR. PEREZ: Yeah.  
 19 A I didn't ask the dealer whether their  
 20 motivation was well-founded or not. If  
 21 somebody tells me I'll tell you what I think  
 22 but I don't want to be connected with this  
 23 report in any way where I can be identified, I  
 24 respect that.  
 25 But I certainly did consult them.

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1 BY MR. ABEL:  
 2 **Q Is that what they told you, these dealers?**  
 3 A Yes.  
 4 **Q AND how many dealers did you talk to?**  
 5 A Again, I think that's rather sensitive  
 6 information, so I really don't want to answer.  
 7 **Q You're not going to tell me how many**  
 8 **dealers you spoke to in conjunction with**  
 9 **forming the opinions in your report?**  
 10 A I just feel very uncomfortable about  
 11 talking about specific dealers, even in  
 12 numbers, and so on, but we did speak to a  
 13 number, and I think we should just leave it at  
 14 that.  
 15 **Q Well, I understand you're reticence to**  
 16 **talk about the source date for your report.**  
 17 **However, I'm entitled to find out how many**  
 18 **people you spoke to, and indeed, who you spoke**  
 19 **to.**  
 20 MR. ABEL: If you are going to take the  
 21 position that he's not required under some  
 22 confidentiality agreement to disclose this  
 23 information, then that will be a different  
 24 story.  
 25 MR. PEREZ: It's the same position

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1 Mr. Plummer took with respect to every item of  
 2 testimony.  
 3 MR. ABEL: Fundamentally different. We're  
 4 not talking --  
 5 BY MR. ABEL:  
 6 Q Let me ask you: Did you have a  
 7 confidentiality agreement with any of these  
 8 individuals, these third parties?  
 9 A It's implicit in our agreement, yes. We  
 10 have oral confidentiality.  
 11 Q Did you discuss that oral confidentiality  
 12 with them?  
 13 A With whom?  
 14 Q With those third-party dealers?  
 15 A Yes.  
 16 Q I don't really care about the names.  
 17 Did you have an agreement with them that  
 18 you wouldn't close the number of dealers you  
 19 had talked to?  
 20 A I feel that anything I can say in  
 21 particular is really basically a violation of  
 22 the confidentiality and the trust that my long  
 23 established sources felt.  
 24 Q How is the number of dealers that you  
 25 spoke to in forming your opinion in any way

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1 disclosing their identities?  
 2 A There are a limited number of dealers in  
 3 each particular field. And, consequently, even  
 4 that -- it's a very small world and people know  
 5 who my friends are, and even that, would be, I  
 6 think, a breach of confidentiality.  
 7 Q Were any of your team members involved in  
 8 picking what definition of value you utilized  
 9 in this case?  
 10 A I think the decision was ultimately mine,  
 11 but I certainly discussed it with them.  
 12 Q Did you review reports submitted by other  
 13 experts in this case?  
 14 A I certainly did. I mean, the reports I  
 15 reviewed -- we had, as I testified before  
 16 several times, we had a number of phone  
 17 conversations. I spoke to most people. Some  
 18 of the other members of the core team spoke to  
 19 others. We then discussed it.  
 20 MR. PEREZ: I'm sorry. I think I missed  
 21 the question because that answer was not to the  
 22 question that was asked.  
 23 MR. ABEL: No. I'm going to ask a  
 24 different question.  
 25 MR. PEREZ: And I'm going to move to

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1 strike your answer because you didn't answer  
 2 the question that was asked.  
 3 BY MR. ABEL:  
 4 Q Okay. My question to you is: You're  
 5 aware that other individuals in this case,  
 6 including -- or entities including Christie's,  
 7 Artvest and Winston filed reports?  
 8 A Yes.  
 9 Q Did you review those reports?  
 10 A Yes, I did.  
 11 Q In fact, you believe -- you wrote in your  
 12 report that it was of significant importance  
 13 that you reviewed the reports submitted by  
 14 others; isn't that right?  
 15 A That's correct.  
 16 Q Why was it of significant importance that  
 17 you review the Christie's, Artvest and Winston  
 18 reports?  
 19 A Because they clearly had opinions in the  
 20 case with the property. And as I testified  
 21 earlier, it's of significant importance to  
 22 review all valuations for the items under --  
 23 that are being considered for appraisal.  
 24 Q You don't believe you'd be more objective  
 25 by forming your own appraisal without looking

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1 at third parties?  
 2 A No.  
 3 Q Have you ever worked at Christie's before?  
 4 A I've worked for Christie's.  
 5 Q And do you believe that Christie's is a  
 6 respected auction house in the profession, in  
 7 the industry?  
 8 A Yes.  
 9 Q And Christie's appraises works of art?  
 10 A Yes.  
 11 Q That's their core business?  
 12 A No.  
 13 Q That's part of their core business?  
 14 A Yes and no.  
 15 Q Am I correct that Christie's sells art  
 16 regularly?  
 17 A Yes.  
 18 Q And they appraise works of art in  
 19 conjunction with those sales?  
 20 A They give what USPAP calls valuation  
 21 services, which is different from appraising.  
 22 Q Well, they value works in conjunction with  
 23 those sales?  
 24 A They value works that are being offered  
 25 for sale.

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1 Q And the value that they place on those  
 2 works is intended to determine how much they  
 3 are expected to sell for at auction?  
 4 A They are auction estimates.  
 5 Q And is that the same thing as what I just  
 6 said?  
 7 A What?  
 8 Q Their estimates as to how much the artwork  
 9 will actually sell for at auction?  
 10 A That's how I would define auction  
 11 estimates.  
 12 Q And would you say that Christie's is  
 13 respected in the industry for doing art  
 14 estimate appraisals, art valuation estimate  
 15 appraisals?  
 16 Let me rephrase it.  
 17 A Yeah.  
 18 Q Would you say that Christie's is respected  
 19 in the industry for doing auction estimate  
 20 appraisals?  
 21 MR. PEREZ: Move to -- objection based on  
 22 form.  
 23 A Those are not appraisals.  
 24 BY MR. ABEL:  
 25 Q Okay. Would you agree with me that

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1 Christie's is respected in the industry for  
 2 doing auction estimates of value?  
 3 MR. PEREZ: Same objection.  
 4 A I would prefer to use the word  
 5 "profession" as opposed to industry. But the  
 6 answer to the question is yes.  
 7 BY MR. ABEL:  
 8 Q You opined on Christie's methodology in  
 9 the Andy Warhol case; isn't that right?  
 10 A I did, yes.  
 11 Q And what was Christie's methodology in  
 12 that case?  
 13 A I was basically retained by the Andy  
 14 Warhol Foundation for the Visual Arts to opine  
 15 on, in that particular case, whether Christie's  
 16 employed proper methodology in applying a  
 17 blockage discount.  
 18 Q Do you know what Christie's methodology  
 19 was in that case was?  
 20 A It was a long time ago. It was 1993. So  
 21 that's 21 years ago, I guess. So I have a  
 22 recollection. But it's been a while since I  
 23 looked at the file.  
 24 Q And what was your recollection as to their  
 25 methodology?

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1 A In broad terms, they determined values for  
 2 individual works of art in the Andy Warhol  
 3 holdings and then applied blockage discount in  
 4 various categories. I think they had about ten  
 5 different categories and ten different  
 6 discounts.  
 7 But again, it's been 21 years since I've  
 8 been involved in this.  
 9 Q And do you know if Christie's methodology  
 10 in that case involved anything other than  
 11 valuing distinct pieces of art as opposed to  
 12 categories of art?  
 13 A They valued categories of art, yes.  
 14 Q And what was the size of the Warhol  
 15 collection being valued?  
 16 A 96,000 pieces.  
 17 Q And the categories of art that Christie's  
 18 valued in that collection, do you recall  
 19 anything about what those were compromised of?  
 20 A Yes, I do.  
 21 Q What were they compromised of?  
 22 A There were paintings, there were prints,  
 23 there were drawings, there were photographs,  
 24 there were subdivisions of each one of those  
 25 categories.

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1 And as I think I've testified, maybe not,  
 2 there were about, if I recall correctly, there  
 3 were about ten separate categories that they,  
 4 what shall I say, that they aggregated together  
 5 and then looked at the profile of each category  
 6 as a whole.  
 7 Q And do you know how Christie's in that  
 8 context went about determining the value for  
 9 each one of the categories before applying a  
 10 blockage discount?  
 11 A Other than what was put in their report, I  
 12 was not party to that determination.  
 13 Q You recall testifying in that case that  
 14 you thought Christie's appraisal was a  
 15 visionary?  
 16 A I don't recall.  
 17 Q Do you recall testifying in that action  
 18 that when doing an appraisal of a collection it  
 19 is improper to consider the owner's business  
 20 plan?  
 21 A In the context of that case, I may have  
 22 said that.  
 23 But, again, it was all qualified within  
 24 the context of that case.  
 25 Q Am I correct, that you testified in that

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1 case that the underlying premise of an  
 2 appraisal is that the value of the collection  
 3 is determined as if all of the work were put up  
 4 for sale at one time?  
 5 A In that particular case.  
 6 Q And why did you form that opinion in that  
 7 case but not here?  
 8 A Because in that particular case there was  
 9 a block transfer of assets from the estate of  
 10 Andy Warhol to the Andy Warhol Foundation for  
 11 the Visual Arts.  
 12 Q And what did that have to do with whether  
 13 or not you make a determination as to whether  
 14 or not all of the assets would be sold at one  
 15 time?  
 16 A Because all property was changing  
 17 ownership and changing hands. So it had to be  
 18 valued in that context.  
 19 Q What was the definition of value used in  
 20 that context?  
 21 A I didn't use the definition of value.  
 22 Q What was the definition of value used by  
 23 Christie's in that context?  
 24 A If my memory serves me correctly, it was  
 25 fair market value.

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1 Q And did you opine that that was the  
 2 correct definition of the value used?  
 3 A I was not asked to give an opinion on  
 4 that.  
 5 Q Do you recall testifying in that Warhol  
 6 case about a Mapplethorpe appraisal?  
 7 A I do.  
 8 Q And do you recall testifying that you  
 9 thought that the Mapplethorpe appraisal should  
 10 be torn up and started again because the  
 11 owner's business plan was considered in no  
 12 blockages discount had been applied?  
 13 A In that particular case, yes.  
 14 Q And why was that?  
 15 A Because, again, the -- it was a transfer  
 16 of the assets of the estate of Robert  
 17 Mapplethorpe to the foundation -- I forgot what  
 18 it was called. It was the exact same parallel  
 19 as -- in Warhol.  
 20 Q And would you agree that whenever there is  
 21 a transfer of the assets of one entity to  
 22 another, then you need to assume that the  
 23 entire collection would be put up for sale at  
 24 one time in forming your opinion of value?  
 25 A If there's was a specific transfer, yes.

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1 Q You reviewed the report in this matter by  
 2 Vanessa Fusco of Christie's, correct?  
 3 A I did.  
 4 Q When did you receive it?  
 5 A Well, it came piecemeal, because part of  
 6 the report was published in the Houlihan  
 7 Lokey -- I don't know how you classify the  
 8 report, or exhibits, but it was in Houlihan  
 9 Lokey's documentation.  
 10 The important matter of the report,  
 11 explaining what was done, I believe, was dated  
 12 July 8, 2014, which -- and then I can't tell  
 13 you the exact date I received it, but sometime  
 14 after that date and prior to the completion of  
 15 our report.  
 16 Q Do you know Vanessa Fusco?  
 17 A No, I do not.  
 18 Q Are you aware of -- does she have a  
 19 reputation in the profession, to your  
 20 knowledge?  
 21 A I don't know of anything about her.  
 22 Q Do you know the valuation methodology  
 23 generally employed by Christie's for valuing  
 24 art?  
 25 A I wish I did.

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1 Q Were you engaged in this action to perform  
 2 a rebuttal of Fusco's report?  
 3 A No.  
 4 Q Was Fusco's methodology in this case  
 5 similar to her -- to the methodology used by  
 6 Christie's in the Warhol case?  
 7 A I can't recall.  
 8 Q You note that Christie's -- in your report  
 9 you note that Christie's assigns a wide range  
 10 of value between high and low value for pieces  
 11 of art; is that right?  
 12 A Are we talking about in general?  
 13 Are we talking about specifically to the  
 14 Fusco report in this particular case?  
 15 Q Let's talk about the Fusco report in this  
 16 case.  
 17 Is it your opinion that Fusco assigns a  
 18 wide range between high and low values in the  
 19 values that she came up with for the pieces of  
 20 art in her report?  
 21 A That is my opinion.  
 22 Q And you say that you believe the range of  
 23 values was extremely wide?  
 24 A I do.  
 25 Q And do you believe that undermines her

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<p style="text-align: right;">Page 214</p> <p>1 <b>credibility in her report?</b></p> <p>2 A To a certain extent, yes.</p> <p>3 <b>Q And why is that?</b></p> <p>4 A Because an appraiser, if indeed she was</p> <p>5 acting as an appraiser, while range of value is</p> <p>6 certainly permissible and explicitly stated in</p> <p>7 USPAP, nonetheless, a reasonable person would</p> <p>8 want a narrower range than the one used in the</p> <p>9 Christie's valuation object after object.</p> <p>10 <b>Q And why is that?</b></p> <p>11 A Why?</p> <p>12 Because an appraiser can do better than</p> <p>13 doing a huge range. There is certainly a</p> <p>14 validity in using ranges, but not when the</p> <p>15 range is anywhere near the range that</p> <p>16 Christie's put into their report.</p> <p>17 <b>Q Can an appraiser do better when faced with</b></p> <p>18 <b>those "extreme," as you call, ranges, by simply</b></p> <p>19 <b>averaging the high and low together and coming</b></p> <p>20 <b>up with a number?</b></p> <p>21 A No.</p> <p>22 <b>Q Why is that not appropriate?</b></p> <p>23 A It's not appropriate because the appraiser</p> <p>24 should do an analysis initially to determine</p> <p>25 what a credible range would be.</p>	<p style="text-align: right;">Page 216</p> <p>1 But we certainly reviewed them.</p> <p>2 <b>Q Did you know Elizabeth von Habsburg before</b></p> <p>3 <b>this case.</b></p> <p>4 A Yes, I do.</p> <p>5 <b>Q Do you respect her in the industry?</b></p> <p>6 A Very much so.</p> <p>7 <b>Q Do you know the valuation methodology</b></p> <p>8 <b>generally employed by von Habsburg?</b></p> <p>9 A Well, I don't think von Habsburg applies</p> <p>10 her own valuation methodology. She's the</p> <p>11 director of the Winston Group and they apply</p> <p>12 methodology.</p> <p>13 <b>Q What was her role with regard to this</b></p> <p>14 <b>engagement, in your understanding?</b></p> <p>15 A What was Elizabeth von Habsburg's role?</p> <p>16 <b>Q Yes.</b></p> <p>17 A It's my understanding that as head of</p> <p>18 Winston Art Group, they were engaged by</p> <p>19 Syncora, another creditor in the bankruptcy</p> <p>20 action, bankruptcy case, I should say.</p> <p>21 <b>Q Did you talk with her about her report of</b></p> <p>22 <b>the methodology in her report?</b></p> <p>23 A Did I speak to Elizabeth von Habsburg --</p> <p>24 <b>Q Yes?</b></p> <p>25 A -- about the report, no.</p>
<p style="text-align: right;">Page 215</p> <p>1 <b>Q Did you review the report in this matter</b></p> <p>2 <b>by Elizabeth von Habsburg at Winston Art Group?</b></p> <p>3 A I did.</p> <p>4 <b>Q Did you discuss that report with anyone</b></p> <p>5 <b>other than counsel?</b></p> <p>6 A I discussed it with the team.</p> <p>7 <b>Q The entire team?</b></p> <p>8 A The core members of the team.</p> <p>9 <b>Q And who were they?</b></p> <p>10 A And possibly with some of the others</p> <p>11 because -- I can't recall if we shared that</p> <p>12 report, because we only got it in draft form</p> <p>13 relatively before.</p> <p>14 But the core members of the team, as I</p> <p>15 have identified are: David Shapiro,</p> <p>16 Shaun Cooper and Rob Leeds with the Silar</p> <p>17 Group.</p> <p>18 <b>Q What about with regards to the Fusco</b></p> <p>19 <b>report, did you review the report with those</b></p> <p>20 <b>same team members?</b></p> <p>21 A I did.</p> <p>22 <b>Q Did you review it with anyone other than</b></p> <p>23 <b>counsel and those team members?</b></p> <p>24 A I really can't recall whether we shared</p> <p>25 those values with the individual appraiser.</p>	<p style="text-align: right;">Page 217</p> <p>1 <b>Q How did the -- how did what Elizabeth von</b></p> <p>2 <b>Habsburg did in her report differ from what you</b></p> <p>3 <b>did with regard to your method on Step 1 of</b></p> <p>4 <b>your methodology?</b></p> <p>5 MR. PEREZ: Objection. Assumes facts not</p> <p>6 in evidence.</p> <p>7 A I think it's all detailed in my report.</p> <p>8 But it's not Elizabeth von Habsburg, it's</p> <p>9 Winston group, because there are many people</p> <p>10 involved in that; appraised individual objects</p> <p>11 and came up with their range in their valuation</p> <p>12 conclusions.</p> <p>13 I can't recall whether they used range or</p> <p>14 whether they came up with a specific value.</p> <p>15 BY MR. ABEL:</p> <p>16 <b>Q Do you know if they used a committee</b></p> <p>17 <b>approach to determining value?</b></p> <p>18 A I believe it's stated in their report that</p> <p>19 they did.</p> <p>20 <b>Q And do you know how their committee</b></p> <p>21 <b>approach differ from your committee approach,</b></p> <p>22 <b>if at all?</b></p> <p>23 A I have no idea what their committee</p> <p>24 approach is so I can't answer that question.</p> <p>25 <b>Q Is it appropriate to rely upon the</b></p>

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1 opinions of specialists in coming up with an  
 2 opinion of value?  
 3 A I certainly think it's appropriate to take  
 4 them into consideration.  
 5 Q You've also reviewed the report in this  
 6 matter by Michael Plummer of Artvest?  
 7 A I did.  
 8 Q Did you discuss that report with anyone  
 9 other than counsel and, I believe you said  
 10 Ian Peck before?  
 11 A Yes.  
 12 Q And who else did you discuss it with?  
 13 A My team members.  
 14 Q And was it the same core team members that  
 15 you discussed it with?  
 16 A Yes.  
 17 Q Anyone else?  
 18 A I believe possibly individual team  
 19 members. When I say "team," I mean all the  
 20 people who worked on the valuation, and I  
 21 consider them to be part of the team.  
 22 Q And who are those?  
 23 A They are all listed in the appraisal  
 24 report. I can look at it.  
 25 But if I remember correctly.

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1 Do you want me to give the names?  
 2 Q Yeah. If you recall who you spoke to  
 3 about the Plummer report.  
 4 A Okay. I or the core team members spoke  
 5 about it. And they were -- it was Davinish,  
 6 [ph], James Callahan, Mariana Whitman,  
 7 Sarah Cox, Jason Christian.  
 8 I'm sure there might be someone else, but  
 9 I can't recall at this moment. And of course  
 10 the core team members.  
 11 Q Were you engaged in this case to perform a  
 12 rebuttal of Plummer's report?  
 13 A No.  
 14 Q You note in your report that Plummer  
 15 relied upon the input of experts, some of whom  
 16 are known by VWA to be of high quality; is that  
 17 right?  
 18 A Correct.  
 19 Q Who are you referring to?  
 20 A Specifically Sabina Wilson and Betty  
 21 Krulik.  
 22 Q Anyone else?  
 23 A Not that I can recall at this moment.  
 24 Q Is it your opinion that the nature of many  
 25 of the DIA pieces in the collection require the

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1 benefit of consultation by a committee for  
 2 quality control in conjunction with the  
 3 valuation?  
 4 A I do.  
 5 Q Is that a requirement of USPAP?  
 6 A USPAP does not have any such requirement.  
 7 Q Does USPAP provide for the use of a  
 8 committee for quality control?  
 9 A USPAP does not dictate the form in which  
 10 an assignment is being fulfilled.  
 11 Q Are you aware of any standard in the  
 12 profession for utilizing a consultation by  
 13 committee to determine the value of a  
 14 collection of art?  
 15 A I don't believe that there's any codified  
 16 standards within the profession for -- what did  
 17 you say, reviewing -- what was your question?  
 18 I'm sorry.  
 19 Q Would you mind repeating it?  
 20 (Record read.)  
 21 A And my answer stands. I don't believe  
 22 there is any codified standard for this type of  
 23 work.  
 24 Q Are you opining in this case regarding a  
 25 committee's consensus or your own expert

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1 opinion?  
 2 A I'm opining in this case on the opinion of  
 3 VWA.  
 4 Q Well, VWA is separate and apart from you,  
 5 correct?  
 6 A I'm a member of VWA.  
 7 Q So I'm asking you, are the opinions that  
 8 you're expressing in this case your opinions or  
 9 are they opinions of a consensus via a  
 10 committee of which you are a part?  
 11 MR. PEREZ: Objection to the form of the  
 12 question. Asked and answered.  
 13 A I can repeat my answer, which is simply  
 14 that all opinions expressed in the report are  
 15 the opinions of VWA -- and I think the report  
 16 clearly states, VWA arrives at its opinions.  
 17 BY MR. ABEL:  
 18 Q Did you disagree with any of the opinions  
 19 expressed by the committee?  
 20 A Disagree?  
 21 I don't know if that's the correct word.  
 22 We discuss it. One has one opinion; one has  
 23 another opinion, possibly, sometimes not. And  
 24 at the end of the day there's a consensus  
 25 opinion that is issued by VWA.



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1 Q Did you have a difference of opinion in  
 2 regarding any of the, as you called it,  
 3 "consensus opinions" that were made by VWA?  
 4 A Every committee that discusses any issue  
 5 may have an initial viewpoint from the  
 6 individual team members.  
 7 But at the end of the day, if there's  
 8 agreement, and in our case there was, that's  
 9 the answer.  
 10 Q So my question is with regard to you  
 11 personally.  
 12 Do you, today, have any opinion that is  
 13 different from the opinions arrived at through  
 14 the consensus process of VWA?  
 15 MR. PEREZ: Object to the form of the  
 16 question. Asked and answered.  
 17 A The answer is no.  
 18 BY MR. ABEL:  
 19 Q In valuing individual pieces of art --  
 20 well, let's take a step back.  
 21 Do you know what Mr. Plummer's methodology  
 22 was for valuing individual pieces of art?  
 23 A I don't think Mr. Plummer valued any  
 24 individual pieces of art.  
 25 Q And why do you believe that?

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1 A Because he's not an appraiser.  
 2 Q And is it your opinion that you cannot  
 3 value pieces of art without being an appraiser?  
 4 A I don't think anyone but a trained  
 5 appraiser should give opinions on works of art.  
 6 Q I'm not asking you what you think should  
 7 be done, I'm asking is it your opinion that it  
 8 can be done?  
 9 A Anything can be done.  
 10 Q Am I correct that auction houses like  
 11 Christie's and Sotheby's routinely produce  
 12 opinions of value as to pieces of art?  
 13 A Generally in the auction estimate context.  
 14 Q Do and you know understand what their  
 15 methodology is?  
 16 A At this point, since it's been, God knows  
 17 how many years, decades, I guess close to 35  
 18 years since I've worked for Christie's, I'm not  
 19 quite sure what they are doing now.  
 20 Q And do you know what methodology  
 21 Mr. Plummer utilized in valuing pieces of art?  
 22 A I don't think Mr. Plummer valued pieces of  
 23 art.  
 24 Q What do you think he did?  
 25 A I think Mr. Plummer issued a report. He

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1 utilized valuations that came from individual  
 2 members of his consulting team of appraisers.  
 3 But I don't think Mr. Plummer did any specific  
 4 valuations himself.  
 5 That is my opinion.  
 6 Q Did you do any specific valuations  
 7 yourself of any of the specific items of art  
 8 that you detailed in Step 1 of your report?  
 9 A Initially, I stated my opinions to the  
 10 various team members, and they stated their  
 11 opinions. And as I've said over and over again  
 12 today, and state very clearly in the report,  
 13 the final opinions that are in the report are  
 14 arrived at through consensus.  
 15 It's a team process.  
 16 Q Did you do anything to compare the results  
 17 of the Plummer's, Christie's and Winston's  
 18 appraisals?  
 19 A We did, for individual values certainly.  
 20 Q Did you notice any large deviations  
 21 between those values?  
 22 A We did.  
 23 Q If one of those appraisals -- am I correct  
 24 that in certain circumstances one of the  
 25 appraisals was several times larger than

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1 another?  
 2 A In some cases, yes.  
 3 Q Does that mean that one of them was wrong?  
 4 A No.  
 5 I can only speak for the opinions that  
 6 were arrived at by VWA. And if they are  
 7 different than the opinions of others, I would  
 8 not apply right or wrong to it, it's too strong  
 9 a term. I would just say that we have  
 10 differences of opinion.  
 11 Q Let's talk about that market comparison  
 12 methodology generally.  
 13 When using that methodology, or that  
 14 approach, is the reliability of the data being  
 15 used for the comparison important in your  
 16 opinion?  
 17 A Yes.  
 18 Q Is having accurate data generally  
 19 important to an appraisal?  
 20 A One strives to have accurate data.  
 21 Q Why is that?  
 22 A Because one takes into consideration data,  
 23 and consequently one hopes that the data is  
 24 reliable.  
 25 Q And if the data is not reliable, does that

<p style="text-align: right;">Page 226</p> <p>1 mean the conclusions generated from that data                  2 is not reliable?                  3 A No, not necessarily.                  4 Q What do you mean?                  5 A Simply that one analyzes the data and sees                  6 whether some sections of the data can be                  7 accepted, some not. But certainly one doesn't                  8 reject a priori data that has been collected.                  9 Q And is it a requirement in your                  10 profession, with looking at data to check its                  11 accuracy to remove those elements of the data                  12 or to discount those elements of the data that                  13 you believe are inaccurate?                  14 A Correct.                  15 Q Did you use the market comparison approach                  16 to value the DIA collection?                  17 A We did.                  18 Q Use the market comparison -- sorry.                  19 Was that the only approach that you                  20 utilized to value the DIA collection?                  21 A That is correct.                  22 Q And you used the market comparison                  23 approach to value the entire DIA collection?                  24 A That is correct.                  25 Q In the market comparison approach, am I</p>	<p style="text-align: right;">Page 228</p> <p>1 similar price?                  2 A And is the question is that correct?                  3 Q Yes.                  4 A The answer is that's not correct.                  5 What the Barnes collection is worth is                  6 unique to the Barnes collection.                  7 Q And you can't just say okay, well, we have                  8 the Barnes collection over here, we have                  9 another museum's collection in New York, for                  10 example, and because the Barnes collection was                  11 10,000 pieces at 10,000 or \$10,000, just                  12 picking numbers out of a hat, you can't say                  13 that because of this museum in New York has                  14 20,000 pieces it would be worth \$20,000?                  15 A Anyone can say anything but I wouldn't say                  16 that.                  17 Q That would be an absurd valuation, in your                  18 opinion?                  19 MR. PEREZ: Object to the form of the                  20 question.                  21 A I don't use the word "absurd." That would                  22 be, most likely, inappropriate.                  23 BY MR. ABEL:                  24 Q So let's look at your methodology in this                  25 case.</p>
<p style="text-align: right;">Page 227</p> <p>1 correct that one of the goals is to identify                  2 the unique characteristics of your subject and                  3 then try to identify other items that are                  4 similar?                  5 A That's correct.                  6 Q And then you make adjustments to account                  7 for the dissimilarities between the subjects                  8 and the other pieces of art, for example?                  9 A That's correct.                  10 Q And under the market comparison approach,                  11 you can't just assume that two pieces of art                  12 are similar enough to be valued similarly?                  13 A Every say, work of art -- every work of                  14 art has its own unique property                  15 characteristics.                  16 Q And would that be the same for collections                  17 of art, that every collection of work has it's                  18 own unique characteristics?                  19 A Collection is the sum of its component                  20 parts. So putting it in that context, yes.                  21 Q So am I correct that under the market                  22 comparison approach you couldn't, for example,                  23 just say that because the Barnes Museum                  24 collection was valued at a certain price that                  25 all museum collections would be valued at a</p>	<p style="text-align: right;">Page 229</p> <p>1 Am I correct, there were was five steps as                  2 detailed in --                  3 A That's correct.                  4 Q -- in your chart on Page 3 of your report?                  5 A That is correct.                  6 Q And what did you do for Step 1?                  7 A Step 1. We have spoken about this                  8 already.                  9 But we looked at 387 works of art                  10 individually and took into consideration the                  11 number of factors, discussed it, and came up                  12 with a range in value, going from a low value                  13 to a high value.                  14 Q And how did you determine to value those                  15 387 units?                  16 A We -- several ways.                  17 We looked at Christie's appraisal report,                  18 what they identified as high value works of                  19 art. We worked -- looked at the items that                  20 were identified in the Houlihan Lokey report as                  21 high value works of art. We looked at the                  22 Detroit handbook of the collections of their                  23 published -- which they considered to be                  24 important works of art. We also looked at the                  25 inventory when -- and the database that Detroit</p>

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1 had and came up with our determination of 387  
 2 works of art, which we could spend the time and  
 3 intellectual capacity and consideration of  
 4 valuing in within the time period that we had  
 5 to produce this report.  
 6 **Q And in reviewing those documents that you**  
 7 **referenced, how did you determine to value**  
 8 **these 387 pieces?**  
 9 MR. PEREZ: Object to the form of the  
 10 question. Asked and answered.  
 11 A I just -- do you want me to repeat what I  
 12 said?  
 13 BY MR. ABEL:  
 14 **Q No, I want to know -- you said that you**  
 15 **looked at the material and the high value items**  
 16 **in those resources.**  
 17 **How did you determine from looking at**  
 18 **those resources which ones you were going to**  
 19 **value for the 387?**  
 20 A We identified the ones that we considered  
 21 to be the most important in terms of both  
 22 significance to the collection, significance to  
 23 the art market, and which were most likely to  
 24 be high value works of art within the context  
 25 of the collection.

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1 **Q How do you define a "high value" item of**  
 2 **art for the collection?**  
 3 A Well, the collection, as one probably  
 4 knows, has a number, quite a large number of  
 5 extremely important works of art that are very  
 6 valuable.  
 7 So looking at the works of art drawn from  
 8 the sources I've just stated, we could tell  
 9 initially what had the potential of having a  
 10 rather high value.  
 11 **Q Do you attempt to sample any different**  
 12 **works from different departments in coming up**  
 13 **with the 387 items that you valued in Step 1?**  
 14 A We selected works from different  
 15 departments.  
 16 **Q Did you make a specific attempt to obtain**  
 17 **a representative sample from each department in**  
 18 **the DIA in doing so?**  
 19 A To the best of our ability, we did.  
 20 **Q Did you attempt to --**  
 21 A I just want to go back and say, within the  
 22 context of the selection process I just  
 23 mentioned.  
 24 **Q Was one of the -- other than sampling in**  
 25 **the context of the greater selection process,**

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1 **did you make a specific attempt to obtain**  
 2 **relative samples from each of the DIA**  
 3 **departments in coming up with the set of 387**  
 4 **you looked at in Step 1?**  
 5 A I think I just answered that I did, we  
 6 did.  
 7 **Q Did you attempt to sample different works**  
 8 **from different price ranges for the set of**  
 9 **items you reviewed in Step 1?**  
 10 A We did.  
 11 **Q What constitutes a high value work, in**  
 12 **your opinion, in terms of dollar value?**  
 13 A That varies from object to object. High  
 14 value is determined within the context of the  
 15 category that one is valuing.  
 16 **Q Let's look at Exhibit 3 in your report.**  
 17 **And this is attachment J.**  
 18 A Sure.  
 19 **Q Sorry. Actually, it's attachment I that**  
 20 **I'd like to look at.**  
 21 A Okay. It's a bit awkward dealing with  
 22 this without tabs. So bear with me.  
 23 Attachment I, you said; is that correct?  
 24 **Q I.**  
 25 A Okay.

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1 **Q My question for you when you get there is:**  
 2 **Does attachment I correspond to Step 1 of your**  
 3 **analysis?**  
 4 A Let me get there first. You know, can we  
 5 take a break for two seconds.  
 6 **Q Sure.**  
 7 THE VIDEOGRAPHER: Go off the record. The  
 8 time is 2:27.  
 9 (Recess taken.)  
 10 THE VIDEOGRAPHER: Go back on the record.  
 11 The time is 2:34. Beginning of DVD No. 4.  
 12 BY MR. ABEL:  
 13 **Q Mr. Wiener, before the break we were**  
 14 **looking at Exhibit 3 Attachment I.**  
 15 **You still have it in front of you?**  
 16 A I'm sorry. I have it in front of me now.  
 17 **Q Looking at the first page of Attachment I,**  
 18 **as the top "DIA Accession No. 30.374"?**  
 19 A That is correct.  
 20 **Q And if I look on the right side there's**  
 21 **three columns, one marked "VWA Low Value," one**  
 22 **"VWA High Value," one "VWA Average Value"; is**  
 23 **that correct?**  
 24 A That is correct.  
 25 **Q Is one of those values more correct than**

<p style="text-align: right;">Page 234</p> <p>1 the other, in your opinion?</p> <p>2 A It's a range in value. There's not one</p> <p>3 that isn't more correct than the other.</p> <p>4 Q So it's your opinion that one of them is</p> <p>5 not more correct than the other?</p> <p>6 A Correct. It's the value -- let me just go</p> <p>7 back to explain.</p> <p>8 The value is expressed in a range; the</p> <p>9 range is as stated. Therefore, there's just</p> <p>10 one value.</p> <p>11 Q And the one value is the range between low</p> <p>12 and high?</p> <p>13 A That's correct.</p> <p>14 Q Let's look at the second to last page of</p> <p>15 this attachment. At the top is "Accession No.</p> <p>16 09.18984."</p> <p>17 A Sorry. What's the accession number?</p> <p>18 Q 09.18984 is the Rembrant, "The Artist's</p> <p>19 Mother Seated."</p> <p>20 A Zero nine --</p> <p>21 Q 18984. The Rembrant at the top, "The</p> <p>22 Artist's Mother Seated."</p> <p>23 A It's 1S; is that correct?</p> <p>24 Q I'm sorry.</p> <p>25 Yes, it's 1S?</p>	<p style="text-align: right;">Page 236</p> <p>1 Are you talking about low values within</p> <p>2 the range or average low value or average</p> <p>3 value?</p> <p>4 Q I see what you're saying.</p> <p>5 In terms of the average value, the lowest</p> <p>6 is the 2,250 for the Maruyama Okyo piece; is</p> <p>7 that right?</p> <p>8 A That appears to be the case.</p> <p>9 Q And if you look at the lowest of the low</p> <p>10 values it's 1,000 for the "Jewel Box inscribed</p> <p>11 'Ahmur Bukhara'?"</p> <p>12 A That's correct.</p> <p>13 Q Why were you valuing items less than</p> <p>14 \$15,000 for purposes of valuing high value</p> <p>15 works in the DIA collection?</p> <p>16 A Because we probably took them from the</p> <p>17 Christie's appraisal report that did exactly</p> <p>18 the same thing, and we attempted to incorporate</p> <p>19 as many of the values that they did -- as</p> <p>20 possible.</p> <p>21 And if you recall, Christie's appraisal</p> <p>22 report, they divided the property into three</p> <p>23 phases, I think they called it. And the first</p> <p>24 phase were objects that were what they called</p> <p>25 "COD," City of Detroit, on display, in the DIA</p>
<p style="text-align: right;">Page 235</p> <p>1 A Okay. Sure.</p> <p>2 Q Do you see what I'm referring to?</p> <p>3 A I think I do.</p> <p>4 Q If you look on the right column, the low</p> <p>5 value is 12,000; high value is 18,000; the</p> <p>6 average is 15,000?</p> <p>7 A That's correct.</p> <p>8 Q If you look down the page from there and</p> <p>9 on to the next page, am I correct that the</p> <p>10 values decrease from there?</p> <p>11 A The value in the range --</p> <p>12 Q Yes.</p> <p>13 A -- decreases?</p> <p>14 And you're saying if I look at the bottom</p> <p>15 of this page and continue on to the next page,</p> <p>16 the values decrease.</p> <p>17 Q And they decrease all the way down to 2000</p> <p>18 at the low value, 2500 for the high value and</p> <p>19 2250 for the average value for the</p> <p>20 Maruyama Okyo?</p> <p>21 A That is not entirely correct.</p> <p>22 Q No.</p> <p>23 What is the lowest valuation for any piece</p> <p>24 of this Step 1 attachment?</p> <p>25 A Again, how do you define "lowest"?</p>	<p style="text-align: right;">Page 237</p> <p>1 collection.</p> <p>2 So that's probably where that came from.</p> <p>3 Q Now, if I were to look at one of the items</p> <p>4 on Step 1 of your report in this attachment,</p> <p>5 would this tell me your -- the expected result</p> <p>6 that the DIA would achieve on the sale of one</p> <p>7 of these goods?</p> <p>8 So for example, if I looked at the, on the</p> <p>9 first page, the Bruegel, The Wedding Dance?</p> <p>10 MR. PEREZ: You're going to ask a question</p> <p>11 or are you done?</p> <p>12 MR. ABEL: Sure enough. I'm making sure</p> <p>13 that he's situated before I ask.</p> <p>14 BY MR. ABEL:</p> <p>15 Q You see I'm referring to, the Bruegel?</p> <p>16 A I sort of know but I just can't seem to</p> <p>17 see.</p> <p>18 Q See what I'm referring to?</p> <p>19 A I do now.</p> <p>20 Q Is it your opinion that the DIA would be</p> <p>21 able to recognize between 150 million and</p> <p>22 \$200 million based on the sale of that Bruegel</p> <p>23 piece?</p> <p>24 A Depending upon which marketplace you're</p> <p>25 referring to.</p>

<p style="text-align: right;">Page 238</p> <p>1 Q Which marketplace do you believe it would                  2 be sold in to achieve 150 million to \$200                  3 million Bruegel for that piece?                  4 A Of course this would be -- at the time we                  5 were probably looking at a combination between                  6 auction and private dealer sale, and bear in                  7 mind that auction houses frequently have                  8 private treatise sales in the sense that they                  9 act like dealers.                  10 Q So for which pieces in your Step 1 did you                  11 look at auction house sales versus non-auction                  12 house sales?                  13 A I think we looked at -- took it into                  14 consideration for everyone, especially the very                  15 high end pieces.                  16 Q And what impact did looking at non-auction                  17 house sales have on your opinion of value for                  18 each of these pieces?                  19 A USPAP states that objects have to be                  20 valued in the most appropriate marketplace.                  21 The most appropriate marketplace would be where                  22 the object would obtain the most money. It                  23 used to be called "highest and best use" within                  24 USPAP, and I forget exactly the terminology                  25 that they use now, but it more or less</p>	<p style="text-align: right;">Page 240</p> <p>1 at to achieve the maximum value.                  2 Is that in your work file?                  3 A That is not contained in the work file.                  4 That was contained -- that was determined in                  5 consensus with the committee or with the team.                  6 Q Okay. So how do you know which                  7 marketplace you considered would be best to                  8 sell the Bruegel piece?                  9 A How do I know?                  10 Q Yes.                  11 A Based upon our internal discussions.                  12 Q And what was the answer?                  13 A The answer was most likely the Bruegel                  14 wedding piece could be sold at auction and                  15 achieve results more or less similar to what is                  16 stated. And it probably would arrive at                  17 similar, if not higher results if it were sold                  18 privately, either by the auction house in a                  19 private treaty sale or by on consignment to a                  20 dealer.                  21 Q And if I were to try to determine what                  22 impact the chosen marketplace has on the sale                  23 value identified in this chart, how could I do                  24 that based on your work file, if at all?                  25 A It's reflected in the appraised value,</p>
<p style="text-align: right;">Page 239</p> <p>1 translates into the highest obtainable price.                  2 Q And where would I look at in your work                  3 papers to make a determination as to what you                  4 considered to be the best marketplace for each                  5 one of these items to be sold?                  6 A It would have to be printed. It would be                  7 in relation to the comparable selected and in                  8 relation to our understanding of the                  9 marketplace.                  10 And, again, it would have to be printed                  11 out.                  12 Q So that's in your electronic work file                  13 somewhere?                  14 A Correct.                  15 Q For each one of these item?                  16 A Each one of which items?                  17 Q Each one of the items in Attachment I?                  18 A Are we talking about all 387 works of art?                  19 Q Yes.                  20 A Most of them, if not all, have comparables                  21 in the electronic work file.                  22 Q And, again, I'm not asking about                  23 comparables. I'm asking about a determination                  24 as to which market you believe that each one of                  25 these items in Attachment I that would be sold</p>	<p style="text-align: right;">Page 241</p> <p>1 that could be considered all marketplace and we                  2 determined, as I've defined, the marketplace in                  3 which it would achieve the highest obtainable                  4 price.                  5 It is not common practice to identify                  6 which marketplace one would do even in a                  7 report, that is not summary.                  8 Q Is it your testimony that the only way                  9 that the Court can make a determination as to                  10 whether or not you picked the appropriate                  11 percentages or discounts or supplements to                  12 determine the marketplace for sale of these                  13 items is to ask you?                  14 MR. PEREZ: Object to the form of the                  15 question. Assumes facts not in evidence.                  16 A Yes. And there has been no discussion                  17 about discounts and supplements. And so I                  18 don't know how that enters into the question                  19 that you asked, to be quite honest.                  20 BY MR. ABEL:                  21 Q Is the only way to figure out what impact                  22 the marketplace or sale that you chose had on                  23 each one of the items in this attachment is to                  24 ask you?                  25 A It's implicit in the report, if you go</p>

<p style="text-align: right;">Page 242</p> <p>1 down to the most -- into the highest, best use,                  2 the discussion of marketplace, and it's within                  3 the -- it's in the report. And if you wanted                  4 to know specifically which marketplace the                  5 appraised value or potentially realized price                  6 would be, then of course you'd have to ask.                  7 <b>Q And if I asked you, would you know the</b>                  8 <b>answer or would you be able --</b>                  9 A For what?                  10 <b>Q For example, the Bruegel?</b>                  11 A For example, the Bruegel, I think it                  12 probably would sell best in a private treaty                  13 sale.                  14 <b>Q And do you know whether or not the</b>                  15 <b>valuation range that you came up with for the</b>                  16 <b>Bruegel piece was based on that assumption?</b>                  17 A We took everything into consideration.                  18 There isn't one primary assumption. We took it                  19 into consideration certainly.                  20 <b>Q And is there any way to test your</b>                  21 <b>statement that you took it into consideration</b>                  22 <b>for each one of these pieces?</b>                  23 A Other than taking my word for it. There's                  24 only two ways to test it: Offer it for sale or                  25 take my word for it.</p>	<p style="text-align: right;">Page 244</p> <p>1 attributable would be. I would have to look at                  2 the specific circumstances. That's a                  3 generalized question, I don't have an answer.                  4 BY MR. ABEL:                  5 <b>Q Did you compare your valuation results,</b>                  6 <b>these 387 to pieces to valuations done by</b>                  7 <b>Plummer, Winston or Fusco?</b>                  8 A We did.                  9 <b>Q Why?</b>                  10 A Because as I said several times earlier in                  11 this case, we took into consideration every                  12 valuation opinion that we had at hand.                  13 <b>Q And were your values always consistent</b>                  14 <b>with Plummer, Fusco and Winston?</b>                  15 A Always consistent in what sense?                  16 <b>Q In terms of the values that you placed on</b>                  17 <b>items in the collection.</b>                  18 A Can you define "consistent"?                  19 I don't understand.                  20 <b>Q Sure.</b>                  21 <b>Was there any discrepancies between the</b>                  22 <b>values that you came up with for the specific</b>                  23 <b>items and the values that Christie's, Fusco or</b>                  24 <b>Winston came up with?</b>                  25 MR. PEREZ: Object to the form of the</p>
<p style="text-align: right;">Page 243</p> <p>1 <b>Q Can third parties rely on your valuation</b>                  2 <b>of a specific piece of art in Step 1 for their</b>                  3 <b>purchase decisions?</b>                  4 A For?                  5 <b>Q If a consumer were to see a copy of this</b>                  6 <b>report, and were to say, okay, well, I see</b>                  7 <b>Pieter Bruegel the Elder, is appraised by</b>                  8 <b>Mr. Wiener for -- between 150 million and</b>                  9 <b>\$200 million, I'm going to buy it for \$175</b>                  10 <b>million.</b>                  11 <b>Can they rely on that statement in your</b>                  12 <b>report?</b>                  13 A The report is written for a seller, not                  14 for a purchaser, which I think we've discussed                  15 at considerable length all during the day.                  16 <b>Q So if the DIA sells its Bruegel and</b>                  17 <b>achieves -- or agrees to sell its Bruegel as a</b>                  18 <b>result of your appraisal in this case, and</b>                  19 <b>achieves only \$10 million, would you believe</b>                  20 <b>that was an error of your making or an error</b>                  21 <b>that belongs to someone else or is attributable</b>                  22 <b>to someone else?</b>                  23 MR. PEREZ: I would object to the form of                  24 the question. Compound.                  25 A Yes, I don't know who "someone else"</p>	<p style="text-align: right;">Page 245</p> <p>1 question.                  2 BY MR. ABEL:                  3 <b>Q I'm sorry.</b>                  4 <b>Christie's, Plummer or Winston came up</b>                  5 <b>with?</b>                  6 MR. PEREZ: Same objection.                  7 A Is your question: Did we have any                  8 differences of opinion, meaning VWA, as opposed                  9 to the three reports you've mentioned --                  10 BY MR. ABEL:                  11 <b>Q Yes.</b>                  12 A -- in the values assigned?                  13 <b>Q Yes.</b>                  14 A And the answer to that question is yes.                  15 <b>Q Ad did you do anything to adjust your</b>                  16 <b>values after seeing those differences with the</b>                  17 <b>other reports?</b>                  18 A We took those values into consideration                  19 and came up with one more data point that we                  20 took into consideration and came up with our                  21 values fully informed of what the others had                  22 assigned.                  23 <b>Q I'm showing you on the screen a document</b>                  24 <b>that was produced in this action in native</b>                  25 <b>format marked FGIC Wiener 0000063.</b></p>

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<p style="text-align: right;">Page 246</p> <p>1 <b>Have you ever seen this document before?</b>                  2 A I believe so.                  3 <b>Q And what is it?</b>                  4 A Well, you'd have to go through the Excel                  5 chart.                  6 But we have -- well, go back. It's a bit                  7 difficult in Excel, I must say. But anyway we                  8 have various columns. We have -- first of all                  9 there's the name of the object, and the name of                  10 the artist that is, and the title of the                  11 object.                  12 Then we delineate -- you went too far.                  13 Okay. That's good.                  14 You meant we delineate whether Christie's                  15 valued it, whether Artvest valued it, Winston                  16 valued in, then we have listed the DIA                  17 insurance value.                  18 We have the average value for that object                  19 on -- for Artvest, and we have the Winston                  20 value, and I think we have the value going                  21 across, average value and we have the value                  22 that was achieved by VWA or an independent                  23 valuer.                  24 And if you recall, that there were roughly                  25 about 614 items that we did not value, but we</p>	<p style="text-align: right;">Page 248</p> <p>1 <b>Q And this is Accession 09.1S934 Rembrant?</b>                  2 A That's correct.                  3 <b>Q And your value was 32,500, and Winston's</b>                  4 <b>value was \$3,500?</b>                  5 A Correct.                  6 <b>Q Did you do anything to ascertain why your</b>                  7 <b>number was almost ten times larger than</b>                  8 <b>Winston's value for the same piece of work?</b>                  9 A We certainly questioned it.                  10 <b>Q And what did you do after questioning it,</b>                  11 <b>to determine that your number was more</b>                  12 <b>accurate, if anything?</b>                  13 A We reviewed the data that we used and                  14 arrived at our determination.                  15 <b>Q Did you come to the \$32,500 number</b>                  16 <b>separate and apart from looking at Winston's</b>                  17 <b>value?</b>                  18 A Probably initially. But then we reviewed                  19 it in conjunction with Winston's value to see                  20 if we believed that they were right and that we                  21 agreed with their value and then modify it, or                  22 whether we stuck to our, or maintained, to be                  23 precise, our value.                  24 <b>Q And how would you suggest that the Court</b>                  25 <b>in this case make a determination as to whether</b></p>
<p style="text-align: right;">Page 247</p> <p>1 took an average of what others had done, and                  2 this chart clearly sets forth all of these                  3 considerations.                  4 <b>Q Who put together this chart?</b>                  5 A Well, we certainly looked at the data, but                  6 Rob Leeds and Silar Group put together this                  7 chart.                  8 <b>Q What was the purpose of this chart?</b>                  9 A To come up with an easy comparison of what                  10 everyone thought.                  11 <b>Q And why did you do that?</b>                  12 A I've stated enumerable times today that we                  13 take into consideration everybody's values.                  14 This was the easy -- a relatively easy way of                  15 considering this data.                  16 <b>Q I'm going to freeze the top row and try to</b>                  17 <b>shrink some of these columns to make it easier</b>                  18 <b>to read the rest.</b>                  19 <b>Let's take a look at Row 17.</b>                  20 A Okay.                  21 <b>Q Did you ever look at the difference -- so</b>                  22 <b>if we're looking at Row 17 under Column J, this</b>                  23 <b>is the \$32,500 average value that you placed on</b>                  24 <b>this item?</b>                  25 A That is correct.</p>	<p style="text-align: right;">Page 249</p> <p>1 <b>or not the value for this piece is \$32,500 or</b>                  2 <b>\$3,500?</b>                  3 MR. PEREZ: Object to the form of the                  4 question. Assumes facts not in evidence.                  5 THE WITNESS: I can answer it, though?                  6 MR. PEREZ: Yes.                  7 A The Court is going to take into                  8 consideration what our value was, what we did,                  9 and then make a determination which value would                  10 be more credible than the other.                  11 BY MR. ABEL:                  12 <b>Q But what are you going to be able to tell</b>                  13 <b>the Court that you did in coming up with a</b>                  14 <b>\$32,500 determination for this specific piece</b>                  15 <b>of work?</b>                  16 A Just as I told you on several times today,                  17 that we looked at comparable sales and arrived                  18 at the determination that is stated in our                  19 report. Taking -- let me finish.                  20 Taking into consideration the valuation                  21 ascribed by other experts connected with this                  22 valuation, with the case, I mean.                  23 <b>Q And what comparables did you look at in</b>                  24 <b>arriving at a \$32,500 number for this piece?</b>                  25 A I would have to have the work file in</p>

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1 front of us, either electronically or in  
 2 printed form to give you a precise answer.  
 3 Q How about No. 20, it's another Rembrant,  
 4 this time Accession 09.1S937.  
 5 Your average value for this piece was  
 6 \$86,000?  
 7 A Yes. That's the average, right.  
 8 Q The average value?  
 9 A Yes.  
 10 Q Who came up with the original valuation  
 11 for this piece on your team?  
 12 A I can't recall. I think David Shapiro and  
 13 I discussed it together.  
 14 Q And did you see, in reviewing this chart,  
 15 that Winston came up with a \$500 value for a  
 16 piece that you ascribed a value of -- average  
 17 value of \$86,000 for?  
 18 A Definitely.  
 19 Q Did you have an explanation as to why you  
 20 were 170 -- 172 times greater than Winston's  
 21 value?  
 22 A Yes, we probably assumed -- I can't recall  
 23 without looking at the work file, again, either  
 24 electronically or printed, that we used more  
 25 appropriate comparables than they did.

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1 Q And do you know what comparables you used  
 2 for this item?  
 3 A Off the top of my head, I don't.  
 4 Q Do you know what comparables Winston used?  
 5 A I only got the comparables from Winston at  
 6 the last minute, so I would have to review  
 7 that.  
 8 But at the time that we looked at  
 9 Winston's values we did not have their  
 10 comparables in front of us.  
 11 Q Do you know what comparables you used for  
 12 any of the pieces described on this chart?  
 13 A Not off the top of my head. I would look  
 14 at the work file. I don't think anyone knows  
 15 off the top of their head what comparables they  
 16 used. And it would be a disservice not to look  
 17 at the data before answering.  
 18 Q Given that you're 172 times higher than  
 19 Winston for this Rembrant, does that mean that  
 20 you believe Winston is -- her valuation is  
 21 incorrect, or Winston's valuation is incorrect?  
 22 A I would assume so.  
 23 Q You wouldn't assume that your valuation is  
 24 incorrect?  
 25 A I wouldn't put it down if I assumed that

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1 our valuation is incorrect.  
 2 Q But the Court seeing that kind of -- well,  
 3 strike that.  
 4 How did you use the market comparison  
 5 approach for Step 2 of your methodology?  
 6 A We factored -- we made an assumption, Step  
 7 2 is where -- for the 600 items or so; is that  
 8 correct?  
 9 Q That's correct.  
 10 A We took into consideration that our  
 11 colleagues in appraising these items looked at  
 12 appropriate value markets and, therefore, did  
 13 an average of their values, as basically  
 14 reflective of market research that they  
 15 performed, bearing in mind that our values to a  
 16 large extent tended to be a little higher.  
 17 Q So having seen the fact that you believe  
 18 that Winston was inaccurate in some of the  
 19 valuation conclusions that she arrived at when  
 20 compared to your own, why did you believe it  
 21 was appropriate to then utilize her data to  
 22 form a -- an opinion of value based on  
 23 averaging hers with others?  
 24 MR. PEREZ: Object to the form of the  
 25 question. Assumes facts not in evidence.

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1 A It was -- it was, again you've answered  
 2 your own question.  
 3 It was part of an average, and we just use  
 4 that as a point of departure, realizing that  
 5 most likely their values, the average would be  
 6 lower than ours and, therefore, considering  
 7 this to be an appropriate control in case maybe  
 8 we overvalued some things.  
 9 Q So is it your opinion it's appropriate to  
 10 determine the value for a piece of work by  
 11 averaging values that were come up with by  
 12 third parties?  
 13 A I think it's appropriate to take them into  
 14 consideration.  
 15 Q Well, in arriving at the average value of  
 16 434,000,357,825 for Step 2 of your methodology,  
 17 did you do anything other than simply averaging  
 18 the third party appraisals by Christie's,  
 19 Artvest and Winston?  
 20 A We briefly looked at the individual values  
 21 for many of these items, but did not do a  
 22 complete analysis of them, because otherwise  
 23 they would be considered part of the 387.  
 24 Q Am I correct that the only thing that you  
 25 did to arrive at the average value under Step 2

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1 is average Christie's, Artvest and Winston's  
 2 numbers for 616 units and place that average  
 3 value in your report?  
 4 A I explained to you that that's not the  
 5 only thing we did.  
 6 Q Did you make any adjustments to the  
 7 Christie's, Artvest or Winston's numbers before  
 8 averaging them together to determine the  
 9 average value for Step 2?  
 10 A We did not. The adjustments were made in  
 11 factoring them in, in relation to ours.  
 12 I just answered that. I said that the  
 13 average values would be a good control in  
 14 coming up with cumulative value for the 1,000  
 15 some odd pieces that were valued by us and by  
 16 others. And so, therefore, if we were a little  
 17 too high, although I didn't think we were,  
 18 otherwise I wouldn't have put the values down,  
 19 this would serve as a control and give us a  
 20 more conservative valuation for 1,000 pieces of  
 21 which we had specific values.  
 22 Q I'm not asking about 1,000 pieces. I'm  
 23 asking for the 616 pieces that you valued in  
 24 Step 2.  
 25 Am I correct that your methodology there

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1 was simply to average Christie's, Artvest and  
 2 Winston's third-party values and come up with  
 3 the average value?  
 4 MR. PEREZ: Object to the form of the  
 5 question. Asked and answered.  
 6 A Correct.  
 7 BY MR. ABEL:  
 8 Q You can answer.  
 9 A The answer lies in methodology.  
 10 The averages were part of the general  
 11 methodology in arriving at the cumulative value  
 12 for pieces that were specifically valued.  
 13 Q Let me ask you about the math, a very  
 14 simple question.  
 15 A Which math?  
 16 Q The math for Step 2.  
 17 A Okay.  
 18 Q The math you utilize in Step 2 was to  
 19 average Christie's, Artvest and Winston's  
 20 valuation for 616 pieces of art; is that right?  
 21 A That is correct.  
 22 Q And is it your opinion that Step 2 doesn't  
 23 stand on its own, but should be reviewed in  
 24 context of Step 1 as well?  
 25 A It was my opinion that Step 2 is to be

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1 taken in as part and parcel of the entire  
 2 valuation within the context that I've said  
 3 several times.  
 4 Q Are you aware of any -- strike that.  
 5 Is it recognized as a USPAP valuation  
 6 approach to average third-party valuation  
 7 opinions to come up with a valuation as to the  
 8 value of those works?  
 9 A As I've testified, I believe USPAP does  
 10 not dictate any specific methodology.  
 11 "Specific" is the operative word, in arriving  
 12 at a particular value.  
 13 Q Other than in this case, have you ever  
 14 created a valuation by averaging the results of  
 15 appraisals done by other people who weren't  
 16 working for you?  
 17 A Sorry. Working for me?  
 18 Q Yes.  
 19 A We come up with -- we don't do averages;  
 20 we come up with consensus opinions.  
 21 Q Other than in this case, have you ever  
 22 created a valuation on appraisals done by third  
 23 parties?  
 24 A We've always taken into consideration  
 25 third-party valuations in conjunction, if it's

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1 the same as the subject property.  
 2 Q And have you ever done a valuation or  
 3 created a valuation by averaging the results of  
 4 appraisals done by third parties?  
 5 A This is first time that we've actually  
 6 created an average.  
 7 Q Have you ever heard of anyone in the  
 8 industry, in your profession, utilizing an  
 9 average of third-party appraisals to determine  
 10 value?  
 11 A I haven't heard of anyone who valued a  
 12 collection of 60,000 works of art.  
 13 Q Well, let's take a step back, and why  
 14 don't you answer my question.  
 15 Have you ever heard of, except in the  
 16 context of this case, anyone in your profession  
 17 ever using an average of third-party appraisals  
 18 to determine value?  
 19 A And, again, my answer is you cannot -- you  
 20 cannot remove it from the context of this case,  
 21 but the -- qualifying it, but the answer is no.  
 22 Q Are you aware of any textbook or other  
 23 publication that suggest that it is acceptable  
 24 in your profession to determine a valuation of  
 25 art by looking at an average of third-party

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1 appraisals of that art?  
 2 A Yes.  
 3 Q And what is that publication?  
 4 A USPAP.  
 5 Q And it is your opinion that USPAP provides  
 6 that it is appropriate to form a valuation of a  
 7 collection of art by looking at averages of  
 8 third-party appraisals of that art?  
 9 MR. PEREZ: Objection to the form of the  
 10 question. Assumes facts not in evidence.  
 11 A And I've answered question that USPAP does  
 12 not get specific.  
 13 BY MR. ABEL:  
 14 Q Where in USPAP does it provide that you  
 15 can utilize an average of third-party  
 16 appraisals to determine value?  
 17 A USPAP states that appraisers have to take  
 18 into consideration other -- whatever data is  
 19 deemed to be appropriate and employ the  
 20 necessary steps in using that data in arriving  
 21 at valuation.  
 22 Q So it doesn't provide specifically for the  
 23 use of an average of third-party appraisals,  
 24 correct?  
 25 A I've testified already that USPAP is not

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1 that specific.  
 2 Q Am I correct that Christie's and Winston  
 3 used a fair market value definition in their  
 4 appraisals?  
 5 A Christie's and Winston stated that they  
 6 used fair market values, yes.  
 7 Q And how did you determine marketable cash  
 8 value utilizing an average of Christie's,  
 9 Artvest and Winston's values if they didn't use  
 10 marketable cash value?  
 11 A Well, let's backtrack.  
 12 Artvest didn't say what value they used,  
 13 to the best of my knowledge.  
 14 Christie's stated that they were using  
 15 fair market value, when in point of fact, they  
 16 were using marketable cash value. They called  
 17 it something else, but what they did was  
 18 marketable cash value.  
 19 As far as Winston goes, they stated that  
 20 they were using fair market value.  
 21 So already we have two out of the three  
 22 either undefined or incorrectly defined values  
 23 for the report, and one, only one, that states  
 24 correctly, I presume, that they used fair  
 25 market value.

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1 Q Do you remember my question, sir?  
 2 A Would you repeat it?  
 3 Q Sure.  
 4 If in your opinion only one of the three  
 5 appraisers that you looked at utilized  
 6 marketable cash value, how did you go about  
 7 taking -- averaging the three different  
 8 appraisals and determining marketable cash  
 9 value in Step 2?  
 10 A Simple.  
 11 We, as I testified earlier, by taking this  
 12 average and realizing that their values, all  
 13 three, tended to be lower than ours, we  
 14 considered this more to be a reflection of  
 15 marketable cash value in our context than fair  
 16 market value that one of the three stated they  
 17 used.  
 18 Q So am I correct that you did nothing to  
 19 apply a -- any analysis of what the cost would  
 20 be for the sale of any of the artwork described  
 21 in Step 2 to convert from what Christie's,  
 22 Artvest and Winston determined was the  
 23 definition of value to marketable cash value?  
 24 MR. PEREZ: Objection to the form of the  
 25 question. Assumes facts not in evidence.

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1 A And can you define what the cost is. I'm  
 2 not sure I understand that.  
 3 BY MR. ABEL:  
 4 Q Sure. Let's have you define it.  
 5 Am I correct that marketable cash value is  
 6 essentially fair market value minus transaction  
 7 cost?  
 8 A Yes.  
 9 Q So what transaction cost did you apply to  
 10 the average value in Step 2 to determine  
 11 marketable cash value, if anything?  
 12 A That the fair market value in one of the  
 13 reports would be averaged out with the unstated  
 14 and essentially, cost of -- and essentially  
 15 marketable cash value in the other report and  
 16 it will be expected that, as I've said before,  
 17 that there would be a lower average value that  
 18 we might not necessary -- that we would  
 19 probably apply in many of the cases, and that  
 20 this would serve as an appropriate control for  
 21 our values which tended to be higher.  
 22 Q Let me make the question easier.  
 23 Did you subtract any transaction expenses  
 24 from the average value you determined by  
 25 averaging Christie's, Artvest and Winston's

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<p style="text-align: right;">Page 262</p> <p>1 numbers?</p> <p>2 A I testified already that we considered the</p> <p>3 total reflective of marketable cash value.</p> <p>4 Q <b>Let's make it even easier. This is math</b></p> <p>5 <b>again.</b></p> <p>6 <b>Did you subtract expenses in any way from</b></p> <p>7 <b>the average value that you arrived at from</b></p> <p>8 <b>looking at Christie's, Artvest and Winston?</b></p> <p>9 MR. PEREZ: Let me object to the question.</p> <p>10 First, you should -- he should be able to</p> <p>11 finish his answer.</p> <p>12 MR. ABEL: Well, actually not if he's</p> <p>13 going to waste the entire seven hours not</p> <p>14 answering questions.</p> <p>15 As you said before, move to strike when</p> <p>16 the witness isn't being cooperative. And I'm</p> <p>17 asking a simple yes-or-no question, and he's</p> <p>18 giving me five-minute narratives.</p> <p>19 So I'm going to ask that my question be</p> <p>20 answered in a yes-or-no format just to make it</p> <p>21 easier.</p> <p>22 MR. PEREZ: You can answer however you</p> <p>23 like.</p> <p>24 He's not dictating how you answer the</p> <p>25 question. Just answer his question.</p>	<p style="text-align: right;">Page 264</p> <p>1 A Okay. Step 3 projected the insurance</p> <p>2 values using the model that we had -- we talked</p> <p>3 about earlier, the 387, and the percentage</p> <p>4 increments into projecting a marketable cash</p> <p>5 value.</p> <p>6 Q <b>Am I correct that you applied Step 3 to</b></p> <p>7 <b>16,378 units?</b></p> <p>8 A That's correct.</p> <p>9 Q <b>Why didn't you simply utilize the</b></p> <p>10 <b>methodology in Step 3 to calculate the value</b></p> <p>11 <b>for the items for which you provided values in</b></p> <p>12 <b>Step 2 and Step 1?</b></p> <p>13 A What methodology are you referring to?</p> <p>14 Q <b>Sure.</b></p> <p>15 <b>You projected the valuation of 16,378</b></p> <p>16 <b>units in the DIA collection by utilizing</b></p> <p>17 <b>insurance value and estimating for</b></p> <p>18 <b>appreciation, why didn't you do the same thing</b></p> <p>19 <b>for the other 1,000 units that you valued in</b></p> <p>20 <b>Step 1 and Step 2?</b></p> <p>21 A Well, for 387 value -- first of all,</p> <p>22 these -- this projection in Step 3 was</p> <p>23 adjusting to current day marketable cash value</p> <p>24 what occurred in time past.</p> <p>25 The 387 values that we came up with on our</p>
<p style="text-align: right;">Page 263</p> <p>1 A Okay. I need the question repeated to me.</p> <p>2 Q <b>Sure. Let's make it easy.</b></p> <p>3 <b>Yes or no, did you subtract from the</b></p> <p>4 <b>amount that you obtained by averaging</b></p> <p>5 <b>Christie's, Artvest and Winston's number</b></p> <p>6 <b>anything?</b></p> <p>7 A Initially, no.</p> <p>8 Q <b>Did you ever subtract from the</b></p> <p>9 <b>mathematical action of averaging Christie's,</b></p> <p>10 <b>Artvest and Winston's number, anything for</b></p> <p>11 <b>purposes of Step 2?</b></p> <p>12 A In arriving at the average number, no,</p> <p>13 except within the context of the way it was</p> <p>14 used.</p> <p>15 Q <b>In Step 2 there was no subtraction to that</b></p> <p>16 <b>average, correct?</b></p> <p>17 MR. ABEL: Object to the form of the</p> <p>18 question. It misstates the testimony.</p> <p>19 A I've answered it, and I've told you</p> <p>20 exactly how we used it, how we viewed it, and</p> <p>21 how it was to be incorporated in the report.</p> <p>22 I think I was pretty clear on it.</p> <p>23 BY MR. ABEL:</p> <p>24 Q <b>How did you go about using the market</b></p> <p>25 <b>comparison approach for Step 3?</b></p>	<p style="text-align: right;">Page 265</p> <p>1 own were done as of the present day, as were</p> <p>2 the 616 or 612 values that were among the --</p> <p>3 well the 600, so-called 616 values that we're</p> <p>4 looking at in Step 2.</p> <p>5 So there was no percentage of increase,</p> <p>6 that was what they said as of -- more or less</p> <p>7 the same time.</p> <p>8 Q <b>Now, you could have saved yourself the</b></p> <p>9 <b>time and expense of appraising independently</b></p> <p>10 <b>387 units and doing the average of 616 units</b></p> <p>11 <b>simply by adding in those thousand units to the</b></p> <p>12 <b>16,378 you valued in Step 3, couldn't you?</b></p> <p>13 A No.</p> <p>14 We if by -- that's definitely not correct.</p> <p>15 Q <b>You couldn't have valued 17,378 units</b></p> <p>16 <b>utilizing Step 3 instead of Step 1 and Step 2?</b></p> <p>17 A It wouldn't be the same.</p> <p>18 Q <b>I know it wouldn't have been the same, but</b></p> <p>19 <b>you could have done it, couldn't you?</b></p> <p>20 A You're talking about wouldn't be the same</p> <p>21 as far as the results. I'm talking about it</p> <p>22 wouldn't be the same in the methodology.</p> <p>23 Q <b>I understand it wouldn't be the same in</b></p> <p>24 <b>terms of methodology.</b></p> <p>25 <b>I'm asking you, methodologically, could</b></p>

<p style="text-align: right;">Page 266</p> <p>1 you have done it.</p> <p>2 Could you have used the methodology</p> <p>3 specified in Step 3 to also value the items</p> <p>4 indicated in Step 1 and Step 2?</p> <p>5 MR. PEREZ: Object to the form of the</p> <p>6 question. Asked and answered.</p> <p>7 Now you are just badgering the witness.</p> <p>8 MR. ABEL: If the witness would actually</p> <p>9 answer a question, then your objection would</p> <p>10 stand.</p> <p>11 MR. PEREZ: We'll he's answering the</p> <p>12 question, but because you don't like the</p> <p>13 answer.</p> <p>14 Q My answer [sic] is simple.</p> <p>15 Could you have utilized the methodology in</p> <p>16 Step 3 to value the items that you valued in</p> <p>17 Step 1 and Step 2 as well?</p> <p>18 A I think your question is could I have used</p> <p>19 the methodology in Step 1 and 2 that's the same</p> <p>20 as in Step 3?</p> <p>21 Q No.</p> <p>22 A Okay. Then I don't understand the</p> <p>23 question.</p> <p>24 Q My question for you is: The methodology</p> <p>25 that you used in Step 3, which was projecting</p>	<p style="text-align: right;">Page 268</p> <p>1 that we considered, that we debated, and that</p> <p>2 we came to specific valuation conclusions, we'd</p> <p>3 have an incorrect basis for projecting the</p> <p>4 16,000 forward.</p> <p>5 Q So you're saying that you couldn't have</p> <p>6 used the methodology detailed in Step 3 with</p> <p>7 regard to the items in Step 1.</p> <p>8 What about utilizing the methodology in</p> <p>9 Step 3 for the 616 items that you valued in</p> <p>10 Step 2; could you have done that</p> <p>11 methodologically?</p> <p>12 A No, because the Step 2 took into</p> <p>13 consideration present day valuations done by</p> <p>14 other experts in the case that we thought were</p> <p>15 certainly more reliable in doing -- taking the</p> <p>16 insurance values and projecting them forward.</p> <p>17 We had specific numbers to work with as opposed</p> <p>18 to going back to data that was 9 to 15 years</p> <p>19 old, if not older.</p> <p>20 Q And why did you believe that the data that</p> <p>21 you utilized in Step 2 was more reliable than</p> <p>22 the data you used in Step 3?</p> <p>23 A Because, as I've stated before, that this</p> <p>24 data was done by other experts as of the</p> <p>25 current date of this report.</p>
<p style="text-align: right;">Page 267</p> <p>1 valuation based on taking the DIA insurance</p> <p>2 values for work and estimating appreciation.</p> <p>3 Could you have done that by looking at the</p> <p>4 same items that you've valued in Step 2 and</p> <p>5 Step 1, on the insurance value chart, and then</p> <p>6 extrapolating their current value by applying</p> <p>7 the appreciation factor that you utilized?</p> <p>8 MR. PEREZ: Object to the form of the</p> <p>9 question.</p> <p>10 A The answer is no.</p> <p>11 BY MR. ABEL:</p> <p>12 Q It's mathematically impossible?</p> <p>13 A Mathematics can be anything; it's</p> <p>14 methodologically impossible.</p> <p>15 Q How is it methodologically impossible?</p> <p>16 A Very simple.</p> <p>17 The -- in order to come up with the</p> <p>18 64.4 percent one needed a reliable sampling</p> <p>19 that was done from the 387, and I could show</p> <p>20 you the chart again that we looked at this</p> <p>21 morning that reflects that, that allowed --</p> <p>22 that then we would have been able to arrive at</p> <p>23 the, what shall we say, the appreciation of,</p> <p>24 the percentage of appreciation at 64.6 percent.</p> <p>25 But if we didn't have the sampling of 387</p>	<p style="text-align: right;">Page 269</p> <p>1 It's clearly more reliable, even as a</p> <p>2 basis for making adjustments and using it as a</p> <p>3 control, and taking data that's 9 to 15 years</p> <p>4 old.</p> <p>5 Q And you don't know, as we discussed</p> <p>6 before, who actually prepared the DIA insurance</p> <p>7 values that you utilized in your report; is</p> <p>8 that right?</p> <p>9 A That's correct.</p> <p>10 Q And you don't actually know for what</p> <p>11 purpose they gathered the values that were</p> <p>12 included in that chart; isn't that right?</p> <p>13 A That's correct.</p> <p>14 Q And am I correct --</p> <p>15 A Let's backtrack. It was represented to me</p> <p>16 that they were insurance values.</p> <p>17 Q By counsel, correct?</p> <p>18 A Yes, I believe so. Yes, by counsel, who</p> <p>19 had a basis for making that assumption, I</p> <p>20 believe.</p> <p>21 Q Well, did you ask counsel whether they had</p> <p>22 a basis for making that assumption?</p> <p>23 A Yes.</p> <p>24 Q And what was their response to you?</p> <p>25 A That they received these insurance values</p>

<p style="text-align: right;">Page 270</p> <p>1 from the DIA.</p> <p>2 Q So counsel told you that these were</p> <p>3 insurance values?</p> <p>4 A Well, I would have to go back and see</p> <p>5 exactly what the data said on it, but I believe</p> <p>6 that's the case.</p> <p>7 Q Am I correct that there's data on this</p> <p>8 chart from over ten years?</p> <p>9 A Which data are you referring?</p> <p>10 Q Alleged insurance value chart.</p> <p>11 A Well, I just testified that we, in</p> <p>12 projecting forward, we were using data between</p> <p>13 9 and 15 years, on average.</p> <p>14 Q And in your experience, how frequently</p> <p>15 should insurance valuation be redone?</p> <p>16 A That depends on the property.</p> <p>17 Q Well, am I correct that conventional</p> <p>18 wisdom calls for a collection to be revalued</p> <p>19 every three to five years?</p> <p>20 A I don't deal with conventional wisdom; I</p> <p>21 deal with professional standards.</p> <p>22 (Deposition Exhibit 7, Document Entitled</p> <p>23 "All about Appraisal: The Definitive Appraisal</p> <p>24 Handbook," marked for identification as of this</p> <p>25 date.)</p>	<p style="text-align: right;">Page 272</p> <p>1 A Well, yes, that is -- in the context of</p> <p>2 this article, which is ten years old, 11 years</p> <p>3 old.</p> <p>4 Q And you said -- it is your opinion that</p> <p>5 the information in the textbook hadn't changed</p> <p>6 in the last ten years; isn't that right?</p> <p>7 A I didn't say that.</p> <p>8 Q See what the transcript says.</p> <p>9 So how frequently do you believe that</p> <p>10 collections should be redone?</p> <p>11 A Depending upon the items involved, could</p> <p>12 be every -- it could be three to five years, it</p> <p>13 could be every year. It depends on the</p> <p>14 specific type.</p> <p>15 Q So it should be done at least three to</p> <p>16 five years but maybe more frequently?</p> <p>17 A Possibly.</p> <p>18 Q How frequently do insurers, in your</p> <p>19 opinion, require insurance valuation appraisals</p> <p>20 to be redone?</p> <p>21 A That depends on the insurance company.</p> <p>22 Every insurance company has its own</p> <p>23 requirements. There's no general answer to</p> <p>24 that question.</p> <p>25 Q Are you aware of any insurance company, in</p>
<p style="text-align: right;">Page 271</p> <p>1 BY MR. ABEL:</p> <p>2 Q I'm showing you a document that's marked</p> <p>3 Deposition Exhibit 7. This is a excerpt from a</p> <p>4 book I checked out of the library, called "All</p> <p>5 about Appraisal: The Definitive Appraisal</p> <p>6 Handbook."</p> <p>7 Is this the appraisal book that you were</p> <p>8 talking about earlier that you said you were</p> <p>9 one of the authors on?</p> <p>10 A That was published in 2003?</p> <p>11 Q It was.</p> <p>12 A Yes.</p> <p>13 Q Take a look at Page 7. Top of the page.</p> <p>14 Am I correct it says "how often should a</p> <p>15 collection be valued," and right underneath</p> <p>16 that, "conventional wisdom calls for a</p> <p>17 collection to be revalued every three to five</p> <p>18 years"; is that right?</p> <p>19 A That's correct.</p> <p>20 Q Ad this was actually an article that you</p> <p>21 wrote; isn't it, sir?</p> <p>22 A That is correct.</p> <p>23 Q So when you say you don't talk about</p> <p>24 conventional wisdom, that's inaccurate; isn't</p> <p>25 that right?</p>	<p style="text-align: right;">Page 273</p> <p>1 your experience, that allows insurance</p> <p>2 appraisals to be redone in periods longer than</p> <p>3 five years?</p> <p>4 A Frequently.</p> <p>5 Q A decade?</p> <p>6 A Frequently.</p> <p>7 Q Have you ever done an appraisal where you</p> <p>8 utilized the methodology that you utilized with</p> <p>9 regard to Step 3 to value a portion of a</p> <p>10 collection before?</p> <p>11 A Projecting values forward, no.</p> <p>12 Q Are you aware of anyone else in the</p> <p>13 industry who has used the methodology that you</p> <p>14 utilized in Step 3 to value a portion of a</p> <p>15 collection?</p> <p>16 A Again I take issue with the word</p> <p>17 "industry," profession.</p> <p>18 To the best of my knowledge, no.</p> <p>19 Q Are you aware of any publication or</p> <p>20 treatise that suggests that it is proper to</p> <p>21 perform the methodology you utilized for Step 3</p> <p>22 to value a portion of a collection?</p> <p>23 A To the best of my knowledge, no.</p> <p>24 Q Did you do anything to examine whether or</p> <p>25 not the information contained in the insurance</p>

<p style="text-align: right;">Page 274</p> <p>1 value charts, as we've been referring to it,                  2 was accurate?                  3 A Accurate in what sense, that it was                  4 accurately transcribed?                  5 <b>Q No, that it was accurate for the period</b>                  6 <b>that it was alleged to have been entered into</b>                  7 <b>the system.</b>                  8 A I think I testified earlier that we                  9 reviewed it.                  10 <b>Q In reviewing it, did you notice anything</b>                  11 <b>that you thought was erroneous?</b>                  12 A Yes.                  13 <b>Q What did you think was in error based on</b>                  14 <b>your review of that document?</b>                  15 A That certain values might have been                  16 anomalies and not done necessarily properly.                  17 <b>Q How did you take that factor into account</b>                  18 <b>in determining what the value should be for the</b>                  19 <b>16,378 objects you appraised according to that</b>                  20 <b>methodology?</b>                  21 A When you're dealing with such a large mass                  22 of objects, definitely there's going to be some                  23 type of variation. But it was our opinion that                  24 at the end of the day there were, judging from                  25 the chart that we provided, you could see that</p>	<p style="text-align: right;">Page 276</p> <p>1 BY MR. ABEL:                  2 <b>Q And how did you go about doing that?</b>                  3 A Simply.                  4 That when you're dealing with a large                  5 sample or a large group, I would call it a                  6 "sample of objects," the anomalies average out                  7 and one sees a particular trend.                  8 <b>Q Did you average the DIA insurance value</b>                  9 <b>collection to determine the ultimate price that</b>                  10 <b>you put on it?</b>                  11 A It's certainly -- we took the total, and                  12 then when I say "average," I mean that one                  13 value that may be wrong, too low, would be                  14 compensated for by another one that's too high,                  15 and at the end of the day the total reflects                  16 it.                  17 <b>Q Did you do any sampling to make a</b>                  18 <b>determination as to how many errors or how</b>                  19 <b>erroneous the DIA insurance value chart was?</b>                  20 A We looked at the insurance values, what we                  21 presumed to be insurance values, and reflected                  22 on what we thought it would be worth at the                  23 time and the results of our inspection, of our                  24 review of this data, led to the conclusion I've                  25 just stated.</p>
<p style="text-align: right;">Page 275</p> <p>1 there was consistency, going back over time,                  2 that our values, even averaging these things                  3 together, would render a specific annual                  4 percentage, which I believe was 10.9 percent.                  5 So when you're dealing with such a large                  6 group of items, clearly, there are going to be                  7 individual discrepancies.                  8 <b>Q And how does multiplying a sample of data</b>                  9 <b>that you believe has errors or discrepancies by</b>                  10 <b>an appreciation rate resolve those errors or</b>                  11 <b>minimize them, in your opinion?</b>                  12 MR. PEREZ: Object to the form of the                  13 question. Misstates facts not in evidence.                  14 A Which data are you referring to?                  15 BY MR. ABEL:                  16 <b>Q Sure.</b>                  17 <b>Is it your opinion that by multiplying the</b>                  18 <b>631,949,458 alleged DIA value by 64.6 percent,</b>                  19 <b>that you somehow addressed the errors that you</b>                  20 <b>believed existed in the underlying data from</b>                  21 <b>the insurance value chart?</b>                  22 MR. PEREZ: Object to the form of the                  23 question.                  24 A The answer to the question is yes.                  25</p>	<p style="text-align: right;">Page 277</p> <p>1 <b>Q What sample size did you utilize to</b>                  2 <b>perform that task?</b>                  3 A Oh, I can't recall. Hundreds, I presume.                  4 <b>Q You presume or you know?</b>                  5 A I believe.                  6 <b>Q Who performed that sample test?</b>                  7 A We all did it together, the core team.                  8 <b>Q Do you have any experience in statistics</b>                  9 <b>yourself?</b>                  10 A Other than the fact that I took two years                  11 of statistics as an undergraduate a long time                  12 ago, I don't.                  13 <b>Q How many years was that?</b>                  14 A Ago?                  15 In the '60s.                  16 <b>Q Who else on your team had training in</b>                  17 <b>statistics?</b>                  18 A Rob Leeds of Silar.                  19 <b>Q Anyone else?</b>                  20 A The team of Silar was comprised of four or                  21 five members led by Rob who worked on this.                  22 And they definitely have a great deal of                  23 experience in statistics.                  24 <b>Q Do you know anything about Rob Leeds or</b>                  25 <b>Silar's reputation in the industry?</b></p>

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1 A Not particularly.  
 2 Q You didn't do any investigation as to  
 3 Silar or Rob Leeds prior litigation history?  
 4 A I did not.  
 5 Q Did you do anything to determine what the  
 6 error rate in your analysis for Step 3?  
 7 A I believe Rob did.  
 8 Q What was the error rate that he  
 9 determined?  
 10 A I would have to look at his notes, what we  
 11 see on the charts are his conclusions.  
 12 Q Did he have a written work file?  
 13 A I believe so.  
 14 Q Was that produced in this case?  
 15 A I think all the substantive -- I think he  
 16 had a file as he was going. And then all of  
 17 the various charts that were included in this  
 18 report are his work file.  
 19 Q Well, did he have a separate work file  
 20 other than the opinions expressed in the  
 21 report?  
 22 A No. I believe anything of substance was  
 23 put in the report.  
 24 Q So you believe that somewhere in the  
 25 report is an indication of the error rate that

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1 Mr. Leeds' determined with regard to the  
 2 methodology in Step 3?  
 3 A I would have to look at the -- again, I'm  
 4 not an expert in statistics, and I would have  
 5 to look at it. I think there is a  
 6 compensation, but I'm not prepared to answer  
 7 that at this time.  
 8 Q If it's not in the report, is it your  
 9 opinion that it doesn't exist?  
 10 A That's not my opinion. It may.  
 11 Q If it's not in the report where else would  
 12 we look to try to determine what that error  
 13 rate is?  
 14 A I don't know. I would have to look very  
 15 closely at his individual numbers to see if  
 16 that's there. But I know he certainly took it  
 17 into consideration in arriving at the final  
 18 computation numbers.  
 19 Q In comparing the 387 -- I'm sorry, let's  
 20 actually look at your chart, Attachment L, to  
 21 Deposition Exhibit 3.  
 22 A Sure.  
 23 Q If you wouldn't mind flipping there.  
 24 A Of course.  
 25 Q Are you there?

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1 A No, I'm getting there.  
 2 Attachment L, you said, right?  
 3 Q Yes.  
 4 A I'm there.  
 5 Q So I'm looking at Page 2 of this  
 6 attachment, the chart entitled "Comparison of  
 7 DIA Insurance Value and VWA Value."  
 8 A Correct.  
 9 That's at the top of the page; is that  
 10 right?  
 11 Q We looked at that before.  
 12 A We did.  
 13 Q Am I correct that in each of the  
 14 categories for which you include information,  
 15 the DIA Insurance Value and the VWA Average  
 16 Value, the VWA Average Value is higher than the  
 17 DIA Insurance Value?  
 18 A That is correct.  
 19 Q Am I correct that you assumed that the  
 20 difference between the DIA Insurance Value and  
 21 the VWA Average Value is based on; A, the  
 22 difference between insurance value and  
 23 marketable cash value, and also the time frame  
 24 in which the DIA insurance value was taken  
 25 versus the valuation date of the VWA average

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1 value?  
 2 A That's correct.  
 3 Q Do you ever assume that perhaps the  
 4 difference between those two values was simply  
 5 because the DIA insurance value was incorrect?  
 6 A Simply stated, that we did spot checks and  
 7 we considered a good deal of the numbers as to  
 8 be credible within the time frame that they  
 9 were applied to those charts.  
 10 Q But you don't recall the sample size or  
 11 error rate utilized from the methodology?  
 12 A I do not.  
 13 Q Did you apply any supplements or discounts  
 14 to any of the items that you valued with regard  
 15 to Step 3?  
 16 A Within Step 3?  
 17 Q Yes.  
 18 A We're talking about the 387 which is the  
 19 base.  
 20 Other than the sup -- we applied  
 21 supplements because of the appreciation or the  
 22 annualized increase, so that definitely is a  
 23 supplement.  
 24 Q Anything else?  
 25 A At this moment, no, that I can think of.

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1 Q Is there anyplace that you could look at  
 2 to determine whether or not you applied  
 3 additional supplements or discounts to the  
 4 items that you valued in Step 3?  
 5 A I don't believe so.  
 6 Q Let's talk about Step 4.  
 7 What did you do for Step 4?  
 8 A Can we take another quick break?  
 9 Q Sure.  
 10 THE VIDEOGRAPHER: Go off the record. The  
 11 time is 3:35.  
 12 (Recess taken.)  
 13 THE VIDEOGRAPHER: We're back on the  
 14 record. The time is 3:54.  
 15 BY MR. ABEL:  
 16 Q Good afternoon, Mr. Wiener. Let's talk  
 17 about step four of your methodology.  
 18 What did you do for step four?  
 19 A Okay. We took the remaining part of the  
 20 inventory that had not been accounted for in  
 21 steps three, two and one, and then compiled a  
 22 chart that you can see in Attachment M, as in  
 23 Mary.  
 24 So what you see reflected in this chart  
 25 is, on the top line going across -- well, first

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1 of all, we looked at the various categories of  
 2 art that are sold at auction that had been sold  
 3 at auction in the calendar year of 2013, when  
 4 we have complete results for a given year. We  
 5 then compiled an average price for each of the  
 6 categories. So what you see on the left is the  
 7 auction -- auction departments that have the  
 8 various sales. So it starts with 19th century  
 9 European, it ends up with South East Asia.  
 10 These are kind of areas in which the  
 11 auction houses offer property that is  
 12 comparable to the holdings in the DIA  
 13 collection.  
 14 The auction categories are not the same as  
 15 the categories that are used for the  
 16 classification in the DIA, in which case we  
 17 amalgamated the auction categories into the  
 18 categories that are the same as the DIA.  
 19 So we have starting with Africa, Oceania  
 20 and Indigenous Americas. And we see it  
 21 includes native American or -- I think -- yeah,  
 22 native American, below that Oceanic, and these  
 23 are the average prices that have been obtained  
 24 at art for that category. You can see this  
 25 done across the board starting with African,

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1 Oceanic and ending with prints, drawings and  
 2 photographs.  
 3 Then these were the average price computed  
 4 with the sold rates of the individual objects.  
 5 We then took into consideration whether  
 6 there should be a discount or a supplement  
 7 based upon our review of individual objects  
 8 within this category comprising the 42,844  
 9 units.  
 10 And then if we felt it was necessary, we  
 11 applied a, either a supplement or discount or  
 12 nothing.  
 13 So in the category of Africa, Oceanic  
 14 Indigenous, we felt that there was a zero  
 15 percent adjustment made for various factors  
 16 such as the prominence of the objects in the  
 17 collection, how it might vary from the norm of  
 18 the objects that would be comprised -- that are  
 19 compromised in the DIA collection and so on.  
 20 So that's reflected in the notes below.  
 21 And so it says average price per  
 22 department was calculated based on Christie's  
 23 and Sotheby's 2013 sales figure as detailed in  
 24 Exhibit E of the Artvest report.  
 25 We relied upon the Artvest report

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1 transcription of data, which is readily  
 2 available to anyone. But since Artvest had  
 3 done that, we couldn't see why not to use it,  
 4 and we took as an extraordinary assumption that  
 5 that data was accurately transcribed.  
 6 These prices were then applied linearly  
 7 across the applicable DIA departments using  
 8 averages for instances where multiple  
 9 departments overlap. You can see that in each  
 10 column when they were multiple departments  
 11 which I've just explained.  
 12 Now, four categories of prints, drawings  
 13 and photographs, we applied a 10 percent  
 14 discount to account for works by less collected  
 15 artists, which may be offset by a number of  
 16 works of extremely well-known artists, for  
 17 example, in the category of photographs. The  
 18 DIA has a really prominent collection of  
 19 photographs.  
 20 But they also have some sort of -- which I  
 21 say, localized interest artists, people from  
 22 the Detroit area. So we took that into  
 23 consideration and we applied, based upon our  
 24 sampling and based upon our overview of each  
 25 category, we applied a 10 percent discount.

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<p style="text-align: right;">Page 286</p> <p>1 Then in other categories we applied  2 supplements, considering the high quality of  3 the works of art in that -- in that category.  4 So, for example, an ancient near Eastern  5 and Great Britain Roman art we applied a 25  6 percent supplement. And the reason given for  7 that is because of the verifiable provenance,  8 and the fact that most cases, the object  9 entered the museum prior to the UNESCO  10 convention on cultural property of 1970. In  11 the category of ancient and Islamic art we  12 applied a 15 percent supplement because of the  13 strong market interest in this category. In  14 the -- so that's lower.  15 In the category of contemporary art after  16 1950, again, another 15 percent supplement  17 because of the strong market interest in this  18 category. However, the supplement has been  19 kept low to be conservative.  20 As many people know, this sector of the  21 marketplace is extremely, for lack of a better  22 work, "hot" at the moment, but we decided to be  23 very conservative, thinking that the prices may  24 have, you know, may not be sustainable at such  25 a rapid growth of increase over the years, and</p>	<p style="text-align: right;">Page 288</p> <p>1 A That is correct.  2 <b>Q Who came up with the amounts of the</b>  3 <b>supplements or discounts utilized in step four,</b>  4 <b>the whole committee?</b>  5 A Well, we discussed it all together, but  6 ultimately the final decision was mine.  7 <b>Q Do you believe your methodology for step</b>  8 <b>four yields accurate results?</b>  9 A I do.  10 <b>Q Do you have any understanding of what the</b>  11 <b>error rate is for that methodology?</b>  12 A I don't think we calculated -- the error  13 rate is built into the conservative supplements  14 that we took, and also the discounts that we  15 took.  16 <b>Q So what is the error rate given that</b>  17 <b>conservative methodology?</b>  18 A Well, it's reflected in the supplements.  19 So you have supplements ranging between  20 25 percent, which is the highest, and  21 zero percent. And you have discount rate,  22 which would also account for error rate as  23 well, between 10 percent and zero percent.  24 <b>Q But you don't know what the error rate,</b>  25 <b>the statistical error rate is for this</b></p>
<p style="text-align: right;">Page 287</p> <p>1 therefore we put a lower supplement, but  2 definitely a supplement, reflecting the high  3 quality objects and the curatorial care that  4 have gone into selecting these objects.  5 Then we have European Modern Art in 1950.  6 And we put a 15 percent supplement, because  7 this market is very selective and because of  8 the strength of the DIA hold in connection this  9 category, this is a conservative supplement.  10 And then we have European paintings, where we  11 only applied a 10 percent supplement, and  12 because most of these paintings in this  13 category have been valued individually, and the  14 remaining paintings are less important or  15 secondary in nature, and as such we've ascribed  16 a conservative supplement. But nonetheless,  17 they are extremely strong paintings.  18 Then in European sculpture and decorative  19 arts, we have a supplement of 15 percent, which  20 is a conservative supplement, because of the  21 large variety of objects within this sector.  22 So that's, in a nutshell, what we did for  23 this sector.  24 <b>Q And was this, again, the process of a</b>  25 <b>consensus in the committee at VWA?</b></p>	<p style="text-align: right;">Page 289</p> <p>1 <b>methodology?</b>  2 A We did not use statistics -- statistic  3 methodology for this, other than the process  4 that I just applied.  5 But -- but there's a big but.  6 By taking into consideration the  7 supplements and the discounts, we accounted for  8 what we would perceive would be proper error  9 rates, given the quality of the works of art  10 and our judgment about the quality of the works  11 of art which was done for a fairly large  12 sampling.  13 <b>Q What sampling are you referring to?</b>  14 A Our review of the data, which at that  15 point had been sorted by Rob Leeds, because we  16 were given new data by your client.  17 <b>Q And what was the sample size that you</b>  18 <b>utilized to test your conclusions in step four?</b>  19 A As I told you, it was fairly large. I  20 don't have the exact sample size. It was  21 hundreds of items within a particular sample  22 size.  23 <b>Q You're dealing with a 42,844 piece portion</b>  24 <b>of the collection, is it your testimony that</b>  25 <b>you sampled to determine that was correct only</b></p>

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1 by utilizing a couple hundred units?  
 2 A I said a couple units in each category.  
 3 Q But you don't know how many totally you  
 4 utilized for a that size?  
 5 A No, we didn't keep track.  
 6 For example, in photographs, we did easily  
 7 2,000.  
 8 In other categories, maybe a little bit  
 9 less. But it was fairly large.  
 10 Q And how did you perform that test  
 11 utilizing these samples in each one of the  
 12 categories to determine that your conclusions  
 13 with accurate?  
 14 A By looking at various appraised values in  
 15 connection with the average prices that we used  
 16 as a point of departure.  
 17 Q Are you aware of what types of art the DIA  
 18 used to compromise the 42,000 pieces that you  
 19 valued in step four?  
 20 A I'm not sure we were aware of what that  
 21 means.  
 22 Q Sure.  
 23 For example, are you aware of how man  
 24 pottery shards are included in that  
 25 42,000-piece collection that you valued for

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1 step four?  
 2 A I can't give you a number off the top of  
 3 my head. But indeed we took all of that into  
 4 consideration.  
 5 Q How did you do that?  
 6 Simply by examining the inventory.  
 7 Q Did you do an analysis of how many pottery  
 8 shards were part of the inventory?  
 9 A Not specifically with a count, but we  
 10 looked at it in relation to the strength of the  
 11 other objects.  
 12 Q How about textile fragments; how many  
 13 textile fragments were in the 42,000 remaining  
 14 pieces of the DIA?  
 15 A Again, I don't have a specific count. We  
 16 took that into consideration.  
 17 Q How did you take it into consideration?  
 18 A By looking at the volume and contrasting  
 19 it in other areas in that particular category  
 20 which were particularly strong.  
 21 Q Isn't the reason why you had to perform  
 22 this analysis, utilizing this methodology  
 23 because the DIA didn't actually provide you  
 24 with information regarding these pieces in that  
 25 insurance chart that you previously looked at?

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1 A Yes. The reason -- it's stated very  
 2 clearly in the report, that the -- we did not  
 3 have insurance values for these 42,844 pieces.  
 4 Q Are you surprised that the DIA would not  
 5 have insurance value for 42,000 pieces, when  
 6 looking at your average prices, they range  
 7 anywhere from 8,166 to over \$500,000 per unit?  
 8 MR. PEREZ: Object to the form of the  
 9 question. Assumes facts not in evidence.  
 10 A And I don't understand question, to be  
 11 honest.  
 12 BY MR. ABEL:  
 13 Q Sure.  
 14 Am I correct if you look at the average  
 15 price that you determined per unit for some of  
 16 these categories like American Art, you  
 17 determined that the average price for a piece  
 18 of work at the DIA for American Art was  
 19 \$464,418; is that correct?  
 20 A Give me a moment to check.  
 21 American Art for African American. So I  
 22 think your number is wrong. But let me just  
 23 check it out.  
 24 So which column, which category are you --  
 25 Q So I'm looking at American Art in the

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1 left-hand side by department.  
 2 American Art --  
 3 A That's auction department.  
 4 Q Right.  
 5 And you determined that the average price  
 6 for a piece from the auction department on  
 7 American Art at Christie's or Sotheby's was  
 8 \$464,418, right?  
 9 A That's correct.  
 10 Q And if you can look over to the right-hand  
 11 side, if you look under American Art before  
 12 1950 and African American Art --  
 13 A Correct.  
 14 Q -- you determined that there were 363 --  
 15 sorry.  
 16 How many pieces of art were there in the  
 17 collection of the DIA that corresponded to the  
 18 American Art that you determined was an average  
 19 price of \$464,000?  
 20 A If you look at the top like 1,5 -- 1,565.  
 21 Q So what you do to determine the value of  
 22 that piece of the collection, is multiply  
 23 1,565, take into account any premium or  
 24 discount, which there were none, by the price  
 25 per art under American Art on the left-hand

<p style="text-align: right;">Page 294</p> <p>1 side. So it would be 1,565 times 464,418                  2 adding in zero percent; is that right?                  3 A Well, the -- excuse me.                  4 The total cost would also include Latin                  5 American Art in that category. So the total                  6 comes to using the average price for both Latin                  7 American Art and for -- hang on -- American                  8 Art, comes to 508,600 -- I'm sorry.                  9 508,623,227.                  10 Q Okay. Let's break that down.                  11 So explain for me the arithmetic to                  12 determine the value for the American Art                  13 indicated in the column marked American Art                  14 before 1950, and African American Art that                  15 corresponds to the American Art department at                  16 Sotheby's and Christie's?                  17 A The total number of objects in that                  18 particular category, as I've just said, is                  19 1,565.                  20 We didn't give the total number of objects                  21 for American Art, per se. But using the                  22 average price from the auction house of 460 --                  23 I'm sorry. It's hard to read the Excel chart.                  24 464,418, we came to the total of                  25 300,063,407,337 for that particular</p>	<p style="text-align: right;">Page 296</p> <p>1 categorizations the DIA used, which as I've                  2 said earlier, does not necessarily correspond                  3 to the categories that are used by the auction                  4 houses.                  5 Q What number did you multiply 464,418 by to                  6 get 363,407,337?                  7 A Unfortunately, I don't have the specific                  8 number here, but I can gladly supply it at a                  9 later date.                  10 Q How did you determine what portion of this                  11 column that you say is attributable to American                  12 Art before 1950 and Latin American Art                  13 corresponded to the American Art department of                  14 the Sotheby's and Christie's?                  15 A We simply looked at auction catalogs and                  16 the holding of DIA and made a determination                  17 that within those categories the average price                  18 was a pretty good reflection in what we've seen                  19 in our sampling and review, which is pretty                  20 extensive, I might say.                  21 And, therefore, we totaled the number of                  22 pieces by the average price and came up with                  23 the grand total of 508,623,227, as you see.                  24 Q Okay. So in column -- in the column                  25 marked "American Art before 1950" and "African</p>
<p style="text-align: right;">Page 295</p> <p>1 subcategory, or category, depending upon which                  2 one you're viewing. Within the category of --                  3 auction category and the category within the                  4 DIA holdings, in -- which would comprise of                  5 American Art before 1950 and African American                  6 Art.                  7 Q How did you determine what percentage of                  8 the 1,565 items you attributed to the American                  9 Art before 1950 and African American Art                  10 corresponded to the American Art department at                  11 Sotheby's and Christie's?                  12 A It's Latin American.                  13 Q I'm looking at -- under the column --                  14 A Yeah. But we didn't include African                  15 American Art, we included it with American Art.                  16 Q Sorry.                  17 If you look at the column header, am I                  18 correct it says, American Art before 1950 and                  19 African American Art?                  20 A Right.                  21 That's the categorization that DIA used,                  22 and it's normally both -- American and African                  23 American Art or generally sold together in the                  24 American Art category.                  25 We used simply, to be consistent, the</p>	<p style="text-align: right;">Page 297</p> <p>1 American Art," because there are items in there                  2 that correspond to the American Art department                  3 at Christie's/Sotheby's and the Latin American                  4 Art department at Christie's/Sotheby's, you                  5 took the 1,565 item total for that column at                  6 the DIA, you divided it by two and attributed                  7 half to American Art and half to Latin                  8 American; is that right?                  9 A No. We didn't do it by two. And I told                  10 you -- I can supply it later on.                  11 We looked at the classifications of the                  12 type of art within that category and came to                  13 that determination. And we were pretty good                  14 about that.                  15 Q You're positive you did that, sir?                  16 A I am relatively sure.                  17 Q If you didn't do that, would that be an                  18 error in your methodology?                  19 A Perhaps.                  20 MR. ABEL: Let's take a break.                  21 THE VIDEOGRAPHER: Let's take a quick                  22 break. The time is 4:16.                  23 (Recess taken.)                  24 THE VIDEOGRAPHER: Back on the record.                  25 The time is 4:22.</p>

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1 BY MR. ABEL:  
 2 Q Mr. Wiener, you mentioned you believe some  
 3 sampling had been done to test of the accuracy  
 4 of step four.  
 5 Do you know who performed that sampling.  
 6 A We all did as a committee.  
 7 Q And do you know what kind of statistical  
 8 sampling had been performed?  
 9 A We performed a sampling for the quality of  
 10 work in the DIA holdings.  
 11 Q And who determined that the sampling you  
 12 did was statistically significance, if anyone?  
 13 A We all determined together.  
 14 Q Did any one of you have a background in  
 15 determining the significance of sampling  
 16 utilizing statistics?  
 17 A We all have a background in art. And we  
 18 looked at the quality of the art as I  
 19 testified.  
 20 Q And was -- was Mr. Leeds involved in that  
 21 process at all?  
 22 A Mr. Leeds helped us compromise the  
 23 document.  
 24 Q Did Mr. Leeds determine what size a sample  
 25 you needed to do to make sure your sample was

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1 statistically significant?  
 2 A He did not.  
 3 Q Do you believe your methodology in step  
 4 four yielded accurate results?  
 5 A I did.  
 6 Q Why then didn't you just use the  
 7 methodology in step four to value the entire  
 8 DIA collection?  
 9 A For the reasons I've stated earlier, that,  
 10 first of all, looking at individual works of  
 11 art and coming up with a specific value for  
 12 each one is definitely one step that one should  
 13 take, and we did as many as we could.  
 14 We then had to look at the remainder of  
 15 the DIA works and come up with a methodology  
 16 that would yield meaningful and still  
 17 conservative results.  
 18 Q If you believe that step four is a  
 19 methodology that yield meaningful and  
 20 conservative results, why not utilize step four  
 21 instead of steps two and three?  
 22 A Very simple.  
 23 The methodology by looking at large groups  
 24 and making general assumptions is not the same  
 25 as using, especially when one is dealing with

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1 relatively high-end works of art, of coming up  
 2 with an individual valuation for a specific  
 3 artwork one after another.  
 4 Q Am I correct that step four, in your  
 5 belief or opinion, is potentially less accurate  
 6 a methodology for valuing the art in steps two  
 7 and three?  
 8 A I think that -- no, you are not correct.  
 9 I think that step four is correct within  
 10 the parameters stated of step four.  
 11 Q And my question for you is: If that's  
 12 correct, why not utilize the methodology in  
 13 step four instead of two and three?  
 14 Why use three separate methodologies to  
 15 review three different pieces of the collection  
 16 instead of one that you believe was accurate?  
 17 MR. PEREZ: Objection to the form of  
 18 question. It's been asked and answered, and it  
 19 assumes facts not in evidence.  
 20 BY MR. ABEL:  
 21 Q You can answer.  
 22 A Because the methodology used in step one,  
 23 and then again in step two, basically was  
 24 focused on high-end works of art, which most  
 25 likely -- with some anomalies, most likely

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1 require closer examination than one sees in the  
 2 example used in step four.  
 3 Q So is it your opinion that the examples --  
 4 sorry, that the sample valued in step four were  
 5 not the high-end pieces of the DIA collection?  
 6 A In many cases they were not.  
 7 Q Did you do anything to determine how the  
 8 sample that you valued for step four  
 9 corresponded to the overall sample of the DIA  
 10 collection in toto?  
 11 A I don't understand the question.  
 12 Q Sure.  
 13 Did you -- let me try to rephrase it for  
 14 you.  
 15 Did you do anything to determine how the  
 16 DIA collection that you valued for step four  
 17 corresponded to the overall DIA collection in  
 18 terms of value?  
 19 A The -- again, the question of the overall  
 20 value of the DIA collection, one can see in the  
 21 value that is ascribed to step four and  
 22 contrast it to the overall valuation plan, if I  
 23 understood you correctly, of the combined value  
 24 in step five.  
 25 Q Let me ask you a different question.

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1 Am I correct that you didn't value the --  
 2 what you previously valued. Take a step back.  
 3 You previously valued the high-end items  
 4 from the DIA collection in step one, correct?  
 5 A Correct.  
 6 Q And in step two, you valued other  
 7 high-valued works that were valued by  
 8 third-party appraisers, correct?  
 9 A That's correct, for the most part.  
 10 Q So the top 1,000 pieces in the DIA  
 11 collection, in terms of high value, were not  
 12 valued in step four; is that right?  
 13 A They were removed from the account,  
 14 correct.  
 15 Q And all of the other items that the DIA  
 16 itself determined were valuable enough to  
 17 provide a valuation in the insurance value  
 18 chart were valued in step three, correct?  
 19 A That's correct.  
 20 MR. PEREZ: Object to the question.  
 21 Assumes facts not in evidence.  
 22 Q And you didn't include any of the almost  
 23 17,000 pieces of art that were independently  
 24 valued for steps 1, 2 and 3 in your valuation  
 25 of step four; is that right?

1 A That is correct.  
 2 Q And the total number of units you valued  
 3 was 60,000, right?  
 4 A The total number of the DIA collection,  
 5 60,225.  
 6 Q So approximately one-third of the,  
 7 potentially the highest value art in the DIA  
 8 was not part of the sample size that you  
 9 analyzed utilizing step four; is that right?  
 10 A The 16,000 plus 1,000 other pieces, making  
 11 17,000, were not included in the 42,844 that  
 12 were included in step four.  
 13 Q And that 17,000 was comprised of those  
 14 items that had already been valued because you  
 15 determined that they were high value or someone  
 16 else determined that they were high value, or  
 17 that the DIA put on a list indicating some  
 18 value for it?  
 19 A That is correct.  
 20 That's for 17,000-some odd pieces.  
 21 Q And that's about a third of the total  
 22 collection, right?  
 23 A Yes.  
 24 Q A little less than a third?  
 25 A Little less than a third.

1 Q So the items that you were valuing in step  
 2 four were the items that, at least to your  
 3 knowledge, no one at the DIA or any of the  
 4 experts in this case were valuable enough to  
 5 independently value for a charter report,  
 6 right?  
 7 MR. PEREZ: Object to the question.  
 8 Assumes facts not in evidence.  
 9 A And I disagree.  
 10 BY MR. ABEL:  
 11 Q Could you have utilized step four to value  
 12 the items in step three and step two?  
 13 MR. PEREZ: Object to the question. Asked  
 14 and answered.  
 15 BY MR. ABEL:  
 16 Q You can answer.  
 17 A One can utilize anything. Whether it's  
 18 considered to be appropriate enough, given the  
 19 circumstances, is another question and another  
 20 determination.  
 21 Q Did you do anything to determine whether  
 22 or not your methodology in step four was more  
 23 accurate than step -- methodology you utilized  
 24 in step two and three?  
 25 A "More accurate," I don't think is the

1 correct term.  
 2 It was different given the volume and the  
 3 profile of the pieces.  
 4 Q Did you do anything to determine whether  
 5 the results of your methodology utilized in  
 6 step four produced more accurate valuation  
 7 results than the methodology used for step two  
 8 and three?  
 9 MR. PEREZ: Object to the form of the  
 10 question. Asked and answered.  
 11 A We -- within the parameters of step four,  
 12 we considered our conclusions accurate.  
 13 BY MR. ABEL:  
 14 Q Did you consider your conclusions accurate  
 15 within the greater parameters of the  
 16 assignment?  
 17 MR. PEREZ: Object to the form of the  
 18 question.  
 19 A Did I consider the conclusions reached as  
 20 accurate within the greater parameters of the  
 21 collection; is that right, the question?  
 22 BY MR. ABEL:  
 23 Q Yes.  
 24 You testified that you believe that the  
 25 conclusions reached utilized the methodology

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1 for step four were accurate with regard to the  
 2 parameters utilized for that step.  
 3 And my question for you is: Were the --  
 4 was the step four methodology and the results  
 5 from that methodology correct in conjunction  
 6 with the parameters for the entire engagements  
 7 to value a DIA collection?  
 8 A The parameters of the entire -- I believe  
 9 that the parameters that we used for valuation  
 10 of the entire DIA collection were correct and  
 11 accurate.  
 12 Q Did you consider any other methodology in  
 13 appraising the items that you appraised in step  
 14 four?  
 15 A We considered this to be the most  
 16 appropriate methodology to be used.  
 17 Q Did you consider any other methodology to  
 18 appraise those 42,000-some items?  
 19 A No, we didn't look at any alternative  
 20 methodology because I didn't think there was  
 21 any viable alternative to be used.  
 22 Q Did you look at the literature in the  
 23 valuation industry or profession to determine  
 24 whether or not there was any recognized  
 25 methodology for valuing 42,000 pieces of the

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1 type you valued in step four?  
 2 A Works of art?  
 3 Q Yes.  
 4 A Is that the question?  
 5 There is no literature.  
 6 Q Were you aware of any discussions in  
 7 classes or conferences of how to value a  
 8 collection of 42,000 pieces of art of the type  
 9 that you valued in step four?  
 10 A To my knowledge, there has been no  
 11 seminars or discussions on the valuation of  
 12 42,000 diverse works of art.  
 13 Q Have you ever in your profession ever  
 14 utilized the methodology described in step four  
 15 to value any number of art or any size  
 16 collection?  
 17 A Not specifically like this.  
 18 Q What do you mean?  
 19 A Meaning that when we valued 20,000 pieces,  
 20 we applied, possibly, an analogous methodology.  
 21 Q Let's talk about that.  
 22 When you valued those 20,000 pieces for  
 23 the unknown artist, did you do a comparison to  
 24 the departments at Sotheby's and Christie's to  
 25 determine an average price per piece?

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1 A No.  
 2 Q So what did you do that was similar to  
 3 your methodology for step four in valuing those  
 4 20,000 pieces?  
 5 A We divided the art into categories.  
 6 Q And is that the only similarity between  
 7 what you did in regard to this engagement for  
 8 step four and what you did with regard to that  
 9 other engagement for 20,000 pieces?  
 10 A At this moment, that's what I can recall.  
 11 Q You could have divided the DIA collection  
 12 into categories and utilized some other sample  
 13 other than at Christie's and Sotheby's to  
 14 compare it to, couldn't you have?  
 15 A I wouldn't know what other sample to use.  
 16 Q Am I correct, as we discussed before, that  
 17 using a comparable market analysis, you need to  
 18 compare your subject to a target collection or  
 19 item for comparison purposes; is that right?  
 20 A I don't know what the word "target" means  
 21 in this context.  
 22 Q Sure. Am I correct that utilizing the  
 23 comparable market approach here, what you would  
 24 do is you'd look at the collection contained in  
 25 one of the DIA departments and look at a

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1 comparable department at some other location to  
 2 see if they were the same or different?  
 3 A That's what we did.  
 4 Q To the extent that they were different,  
 5 you make adjustments to the subject property to  
 6 try to figure out what the price would be on  
 7 the comparison basis; is that right?  
 8 A That is correct.  
 9 Q How did you -- sorry.  
 10 So for example, looking at the American  
 11 Art column, your comparison here was, you  
 12 looked at the DIA's collection of American Art  
 13 and you compared it to the Christie's.  
 14 Sotheby's, collection of the American Art that  
 15 they sold in 2013; is that right?  
 16 A That's correct.  
 17 Q How were they similar, the DIA collection  
 18 of American Art and the Sotheby's collection of  
 19 American Art that they sold in 2013?  
 20 A There were major points of similarity:  
 21 The type of art, the subjects, the artists, the  
 22 sizes, the media, many different points of  
 23 similarity.  
 24 Q And how did they differ, sir?  
 25 A In this particular case, we're talking

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1 about American Art before 1950 and African  
 2 American Art, they were quite similar, and that  
 3 is, therefore, reflected in the zero percent  
 4 neither supplement nor discount.  
 5 **Q Did you review the Sotheby's/Christie's**  
 6 **list of American Art?**  
 7 A We reviewed catalogs, of course.  
 8 **Q I'm asking you.**  
 9 **Did you review it?**  
 10 A Personally?  
 11 **Q Yes.**  
 12 A Over time, I have.  
 13 **Q And did you make a specific determination**  
 14 **that they were so similar, that the DIA**  
 15 **collection of American Art was so similar to**  
 16 **the total sale volume of the 2013 art for the**  
 17 **Christie's/Sotheby's collections, that you**  
 18 **didn't have to make any adjustment to match**  
 19 **them up in a comparison examination?**  
 20 MR. PEREZ: Object to the form of the  
 21 question.  
 22 BY MR. ABEL:  
 23 **Q You can answer.**  
 24 A Sure.  
 25 I'm totally cognizant what takes place in

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1 the sale. I appraise this property all the  
 2 time. And on the basis of that and in  
 3 comparison with the works of art that would  
 4 comprise that category among the 42,000, I  
 5 believe that the zero percentage, neither for  
 6 discount or supplement is correct and accurate,  
 7 if not conservative.  
 8 **Q What percentage of the DIA collection of**  
 9 **American art was gathered or collected for**  
 10 **academic or scholarly purposes?**  
 11 A I was not given that type of curatorial  
 12 determination, nor is it included on the data  
 13 sheets that was supplied, so I couldn't answer  
 14 that question.  
 15 **Q What percentage of the DIA or Sotheby's**  
 16 **collection for the 2013 of items sold in the**  
 17 **American Art department related to scholarly or**  
 18 **academic pieces?**  
 19 A The -- again, the offerings at auction  
 20 sale are extremely varied, and I don't know the  
 21 motivation of the individual consignors,  
 22 whether they viewed these pieces as academic,  
 23 or whether they viewed them in some other way,  
 24 nor do I think could anyone make that  
 25 determination based upon auction catalogs

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1 because for the simple reason that information  
 2 is never given.  
 3 **Q Did you do any independent determination**  
 4 **to determine what percentage of the DIA's**  
 5 **American art collection was valued under \$5,000**  
 6 **or should be valued under \$5,000 in your**  
 7 **opinion?**  
 8 A We looked at the quality of the art and  
 9 came to some type -- not some type, came to a  
 10 valuation conclusion reflected in the reliance  
 11 upon the auction sale averages.  
 12 **Q I'm not asking you what your ultimate**  
 13 **conclusion was from your analysis.**  
 14 I'm asking you: Before you made the  
 15 determination that it was proper to compare the  
 16 DIA, for example, American art collection, to  
 17 the Sotheby's total sale of art in the American  
 18 Art department for 2013, what did you do to  
 19 determine that they were equal samples, that  
 20 you could make that comparison?  
 21 MR. PEREZ: Objection to the form of the  
 22 question.  
 23 A We looked at the quality of the pieces in  
 24 the DIA, as evidenced in the photographs that  
 25 we were given for this particular sector. And

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1 we also compared it to the auction catalogs  
 2 within that particular sector.  
 3 BY MR. ABEL:  
 4 **Q And who is we? Who did that?**  
 5 A The inner committee, which we discussed it  
 6 at great length.  
 7 **Q And what did you do before comparing the**  
 8 **DIA American Art sample to the**  
 9 **Sotheby's/Christie's sample to determine what**  
 10 **percentage of the DIA sample was comprised of**  
 11 **goods under \$5,000 or art under \$5,000?**  
 12 A We did -- we looked at the entirety of the  
 13 collection, and I wouldn't say before, it was  
 14 generally done while we were doing the  
 15 valuation.  
 16 **Q So am I correct that you assumed that the**  
 17 **American Art collection at the DIA was**  
 18 **equivalent to the Sotheby's/Christie's Art**  
 19 **department sales for 2013 for the American Art**  
 20 **department --**  
 21 MR. PEREZ: Object to the form of the  
 22 question.  
 23 BY MR. ABEL:  
 24 **Q -- as part of your methodology?**  
 25 MR. PEREZ: Assumes facts not in evidence.

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<p style="text-align: right;">Page 314</p> <p>1 Go ahead.</p> <p>2 A We made that determination.</p> <p>3 BY MR. ABEL:</p> <p>4 Q And did you make that determination before</p> <p>5 or after you decided to use this methodology</p> <p>6 that you detailed in step four to compare the</p> <p>7 DIA collection to Sotheby's and Christie's?</p> <p>8 A During the process of making this</p> <p>9 determination.</p> <p>10 Q Didn't you think it was important to</p> <p>11 determine whether or not Sotheby's and</p> <p>12 Christie's was an adequate comparable to the</p> <p>13 DIA collection before utilizing it as a</p> <p>14 comparable?</p> <p>15 A More or less I knew what the quality of</p> <p>16 the sales were. I looked at the DIA holdings.</p> <p>17 And we simply came up with that conclusion,</p> <p>18 that it was appropriate to use that category</p> <p>19 without adjustment of a supplement up or a</p> <p>20 supplement down the way we did in other</p> <p>21 sectors.</p> <p>22 Q Does your work file show what data you</p> <p>23 utilized from the DIA collection or the</p> <p>24 Christie's/Sotheby's collection to make a</p> <p>25 determination that in each of the cases you</p>	<p style="text-align: right;">Page 316</p> <p>1 A All the adjustments that were applied and</p> <p>2 the reasons behind it were listed below.</p> <p>3 Q Am I correct that Sotheby's sells works of</p> <p>4 art at over a million dollars?</p> <p>5 A Yes.</p> <p>6 Q Do you know what percentage of the works</p> <p>7 that Sotheby's and Christie's sell are over a</p> <p>8 million dollars?</p> <p>9 A In toto?</p> <p>10 Q Yes.</p> <p>11 A I don't have those figures at hand.</p> <p>12 Q Did you look at those figures in forming</p> <p>13 your opinions in this case?</p> <p>14 A There was no point in looking at the total</p> <p>15 number in all categories that they sold over a</p> <p>16 million dollars. We looked at individual</p> <p>17 sectors.</p> <p>18 Q Okay. In the individual sectors that you</p> <p>19 looked at for Sotheby's and Christie's, do you</p> <p>20 know how many sales they have over a million</p> <p>21 dollars?</p> <p>22 A Generally speaking, yes.</p> <p>23 Q And is that information contained in your</p> <p>24 work file?</p> <p>25 A That information is contained in the work</p>
<p style="text-align: right;">Page 315</p> <p>1 identified, that the DIA collection, as</p> <p>2 separated out in your chart, Attachment M was</p> <p>3 equivalent to a department at</p> <p>4 Christie's/Sotheby's for sales in 2013?</p> <p>5 A Yes.</p> <p>6 Q That's in your electronic work file?</p> <p>7 A That is in the electronic work file, yes.</p> <p>8 Q And the electronic work file shows the</p> <p>9 sample sizes that you utilized to make that</p> <p>10 comparison?</p> <p>11 A We did not record sample sizes.</p> <p>12 Q Does the work file show what led to you</p> <p>13 believe that the DIA -- sorry, that the</p> <p>14 Sotheby's/Christie's department sales</p> <p>15 information for 2013 was comparable to each one</p> <p>16 of the departments at the DIA?</p> <p>17 A As listed, yes.</p> <p>18 Q Other than the adjustments that you</p> <p>19 indicate that you made under the supplements</p> <p>20 column -- sorry, supplement bullet at the</p> <p>21 bottom of this chart, were there any other</p> <p>22 adjustments that you made in order to be able</p> <p>23 to compare accurately the DIA collection, per</p> <p>24 department, with the Sotheby's/Christie's</p> <p>25 department, collection per department?</p>	<p style="text-align: right;">Page 317</p> <p>1 file.</p> <p>2 Q Did you do anything to exclude those sales</p> <p>3 of over a million dollars from your comparison</p> <p>4 between the DIA's collection and the</p> <p>5 Sotheby's/Christie's collection for purposes of</p> <p>6 looking at value in step four?</p> <p>7 A We thought that -- no, we didn't. We did</p> <p>8 not exclude any of the individual sales at</p> <p>9 Sotheby's or Christie's.</p> <p>10 Q So you excluded the top, potentially the</p> <p>11 top one-third of the DIA collections artwork by</p> <p>12 value but you included the top one-third of the</p> <p>13 Sotheby's/Christie's collection by value; isn't</p> <p>14 that right?</p> <p>15 A Correct.</p> <p>16 Q Did you do anything to compare the results</p> <p>17 of your conclusions in step four to the results</p> <p>18 of your conclusions in steps one, two and</p> <p>19 three?</p> <p>20 A I don't quite understand the question.</p> <p>21 Q Sure.</p> <p>22 If I were to take a piece of, for example,</p> <p>23 Old Masters artwork that you valued, let's say</p> <p>24 the Bruegel.</p> <p>25 Is that an Old Master?</p>



<p style="text-align: right;">Page 318</p> <p>1 A That's Old Master.</p> <p>2 Q And if I were to use step four to value</p> <p>3 the Bruegel, for example, am I correct that I</p> <p>4 would value that at \$294,186?</p> <p>5 A Well, if you look at the category for Old</p> <p>6 Master, you will see that there is a note that</p> <p>7 said that we -- it's under European painting,</p> <p>8 that we only used a 10 percent increment</p> <p>9 because most of the paintings in this category</p> <p>10 have been valued individually, and the</p> <p>11 remaining paintings are less important, and as</p> <p>12 such we have ascribed a conservative</p> <p>13 supplement.</p> <p>14 Q Let me make it easier then.</p> <p>15 In your understanding, what's the most</p> <p>16 available piece of American Art at the DIA?</p> <p>17 A Probably the Cotopaxie, which is by</p> <p>18 Church.</p> <p>19 Q And what do you believe that should be</p> <p>20 valued at?</p> <p>21 A If my memory serves me right, we ascribed</p> <p>22 \$75 million to it.</p> <p>23 Q Utilizing your step four to value that</p> <p>24 piece, am I correct that you'd value that at</p> <p>25 \$464,418?</p>	<p style="text-align: right;">Page 320</p> <p>1 random unattributed piece of Native American</p> <p>2 art is not worth \$31,113?</p> <p>3 A That's correct.</p> <p>4 Q If we utilize your step four methodology</p> <p>5 to value that random piece of unattributed</p> <p>6 Native American art, you would value it at</p> <p>7 \$31,114, wouldn't you, sir?</p> <p>8 A Yes.</p> <p>9 Q Step four mass appraisal?</p> <p>10 A No.</p> <p>11 Q What transaction cost did you apply --</p> <p>12 A Well, I retract that statement -- step --</p> <p>13 well, no, step one is not a mass appraisal.</p> <p>14 Q Is step four a mass appraisal?</p> <p>15 A Step four, no.</p> <p>16 Q What transaction costs did you apply, if</p> <p>17 any, for determining marketable cash value in</p> <p>18 step four?</p> <p>19 A We factored that into the percentage</p> <p>20 supplements up and down.</p> <p>21 Q Is there any way to determine what</p> <p>22 percentage of those supplements or discounts</p> <p>23 were comprised of the transaction cost?</p> <p>24 A In each individual category?</p> <p>25 Q Yes.</p>
<p style="text-align: right;">Page 319</p> <p>1 A No, because we removed it from the</p> <p>2 sampling.</p> <p>3 Q If we were to use the methodology in step</p> <p>4 four to value that piece of art -- I'm not</p> <p>5 asking what you did, if you were to use the</p> <p>6 methodology to value that piece of art, you</p> <p>7 would value it at \$464,418, wouldn't you, sir?</p> <p>8 MR. PEREZ: Object to the form the</p> <p>9 question. It's been asked and answered.</p> <p>10 A It would be an inappropriate methodology.</p> <p>11 I wouldn't use it.</p> <p>12 BY MR. ABEL:</p> <p>13 Q Exactly.</p> <p>14 And isn't it also equally inappropriate as</p> <p>15 methodology to value pottery shards</p> <p>16 utilizing -- let me take a step back.</p> <p>17 What department at Sotheby's/Christie's</p> <p>18 would you say corresponds to pottery shards in</p> <p>19 the DIA collection?</p> <p>20 A Depends on the type of pottery shards.</p> <p>21 Q Let's say Native American pottery shards.</p> <p>22 A It would be in Native American Art.</p> <p>23 Q That's row 16?</p> <p>24 A Correct.</p> <p>25 Q And wouldn't you agree with me that a</p>	<p style="text-align: right;">Page 321</p> <p>1 A Yes.</p> <p>2 Q How do I do that?</p> <p>3 A Well, as said below, that in the</p> <p>4 categories where there are supplements, that we</p> <p>5 used conservative values.</p> <p>6 So in many of these categories where there</p> <p>7 would be supplements, the -- had we not used</p> <p>8 marketable cash value, which takes into</p> <p>9 consideration transaction costs, the actual</p> <p>10 supplement would be higher.</p> <p>11 Q Let's make it easier.</p> <p>12 How can I identify specifically what</p> <p>13 transaction costs you took into account in</p> <p>14 calculating marketable cash value for step</p> <p>15 four?</p> <p>16 A Very simple.</p> <p>17 The -- by seeing the reflection in the</p> <p>18 percentages applied up or down.</p> <p>19 Q Is that in your work file somewhere, the</p> <p>20 mathematical calculation that you did to be</p> <p>21 able to determine the transaction costs</p> <p>22 applicable to each one of these departments in</p> <p>23 the DIA in step four?</p> <p>24 A It's reflected in the percentages applied.</p> <p>25 Q Other than the percentages -- other than</p>

<p style="text-align: right;">Page 322</p> <p>1 being implicit in the percentages applied in</p> <p>2 step four, is there any way to determine</p> <p>3 mathematically what the specific or exact</p> <p>4 transaction cost you utilized to determine</p> <p>5 marketable cash value was for any of these?</p> <p>6 A As I say, it's implicit.</p> <p>7 Q To get to the \$8.5 billion total valuation</p> <p>8 for the DIA collection, did you simply add the</p> <p>9 results of step one through four?</p> <p>10 A Yes.</p> <p>11 Q Did you consider whether the value would</p> <p>12 change if you added the different pieces</p> <p>13 analyzed in steps one through four?</p> <p>14 A I don't understand the question.</p> <p>15 Q Sure.</p> <p>16 Did you analyze the effect of the value of</p> <p>17 on the assemblage of the different pieces on</p> <p>18 steps one through four?</p> <p>19 MR. PEREZ: Objection to the question</p> <p>20 form.</p> <p>21 A That's inherent in steps one through four.</p> <p>22 BY MR. ABEL:</p> <p>23 Q Am I correct that USPAP actually requires</p> <p>24 you, when you're examining the effects of</p> <p>25 assemblage of different methodologies or</p>	<p style="text-align: right;">Page 324</p> <p>1 A An extraordinary assumption as defined by</p> <p>2 USPAP is an assumption that one takes as true</p> <p>3 and correct. But if upon further review, it</p> <p>4 turns out not to be the case, the appraiser may</p> <p>5 be obliged to reconsider one's valuation</p> <p>6 conclusion.</p> <p>7 Q Under what circumstances is an appraiser</p> <p>8 potentially obliged to reconsider his facts and</p> <p>9 appraisal if he finds out that assumption is</p> <p>10 wrong?</p> <p>11 A If, for example, it was considered to be</p> <p>12 totally authentic at the time, it was doubted</p> <p>13 at a later stage, one may go back to reexamine</p> <p>14 it and see it that affects value as of the</p> <p>15 effective date of valuation.</p> <p>16 Q Any other examples?</p> <p>17 A Same thing with clear title.</p> <p>18 If it turns out that the work of art that</p> <p>19 was reported as being owned by a collector</p> <p>20 turns out to have a claim of being stolen, then</p> <p>21 one may be obliged to go back and reconsider</p> <p>22 that the value has been affected.</p> <p>23 Q What if a piece of art is subject to an</p> <p>24 encumbrance that prevents its sale, and your</p> <p>25 valuation is for purposes of determining sale,</p>
<p style="text-align: right;">Page 323</p> <p>1 different pieces of the collection, to make an</p> <p>2 independent determination as to whether or not</p> <p>3 the assemblage changes the overall value?</p> <p>4 A USPAP in standard six states that the</p> <p>5 appraiser has to consider that.</p> <p>6 Q And did you do that?</p> <p>7 A Yes.</p> <p>8 Q Where in your report does it indicate that</p> <p>9 you did that?</p> <p>10 A In the section concerning the application</p> <p>11 of blockage discount, I think it's clearly</p> <p>12 stated.</p> <p>13 Q And your opinion was that a blockage</p> <p>14 discount is not appropriate in this case</p> <p>15 because you believe that the DIA collection</p> <p>16 would be sold in an orderly manner?</p> <p>17 A That is correct. No, well -- sold in the</p> <p>18 manner described within the text.</p> <p>19 Q And if the DIA collection was not sold in</p> <p>20 an orderly manner, your assumption that no</p> <p>21 blockage discount would be appropriate would be</p> <p>22 wrong, correct?</p> <p>23 A Depends on the circumstances. I can't</p> <p>24 make that determination now.</p> <p>25 Q What's an extraordinary assumption, sir?</p>	<p style="text-align: right;">Page 325</p> <p>1 is that one of those circumstances where you'd</p> <p>2 have to go back and redo your opinion?</p> <p>3 A Depends upon the specific circumstances.</p> <p>4 Q What circumstances does it depend on?</p> <p>5 MR. PEREZ: Object to the form of the</p> <p>6 question.</p> <p>7 A I think you're asking me to construct a</p> <p>8 hypothetical that I'm not prepared to</p> <p>9 construct.</p> <p>10 I think that all of these determinations</p> <p>11 are dependent upon specific fact patterns as of</p> <p>12 the date in which a value is being ascribed. I</p> <p>13 would need to know the fact pattern.</p> <p>14 BY MR. ABEL:</p> <p>15 Q Am I correct that one of the extraordinary</p> <p>16 assumptions that you made in this case was that</p> <p>17 none of the artwork held by -- in the DIA</p> <p>18 collection were subject to encumbrances that</p> <p>19 would prevent their sale?</p> <p>20 A That's correct.</p> <p>21 I -- let me check my report. I believe</p> <p>22 that's correct.</p> <p>23 (Deposition Exhibit 8, Supplemental</p> <p>24 Receipt and Commitment, marked for</p> <p>25 identification as of this date.)</p>

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<p style="text-align: right;">Page 326</p> <p>1 BY MR. ABEL:</p> <p>2 Q I'm showing a document marked deposition</p> <p>3 Exhibit 8?</p> <p>4 MR. PEREZ: A?</p> <p>5 MR. ABEL: 8.</p> <p>6 BY MR. ABEL:</p> <p>7 Q Have you ever seen this document before?</p> <p>8 A I have not.</p> <p>9 Q I represent to you this was produced in</p> <p>10 this action. This is a supplemental receipt</p> <p>11 and commitment by the Founder Society of DIA</p> <p>12 with regard to the receipt of certain art</p> <p>13 assets from the Tannerhill Estate.</p> <p>14 Do you recall the name Tannerhill in going</p> <p>15 through the documents showing the inventory of</p> <p>16 the DIA collection?</p> <p>17 A I do.</p> <p>18 Q Do you know what percentage of the DIA</p> <p>19 collection is comprised by Tannerhill art</p> <p>20 pieces?</p> <p>21 A I do not.</p> <p>22 Q Take a look at Page 2 of Exhibit 8.</p> <p>23 Item 2 in the middle of the page reads</p> <p>24 that the Arts Commission and the Founders</p> <p>25 society, Detroit Institute of Arts, hereby</p>	<p style="text-align: right;">Page 328</p> <p>1 not. It's certainly included in the gift,</p> <p>2 whether that qualify as an encumbrance I'm</p> <p>3 really not competent to determine.</p> <p>4 Q Well, am I correct that you assumed as</p> <p>5 part of this case that there were no</p> <p>6 encumbrances on any of the DIA collection; is</p> <p>7 that right?</p> <p>8 A That is what is stated in my report.</p> <p>9 Q Does this document cause you to doubt that</p> <p>10 assumption that you included in your report?</p> <p>11 A No.</p> <p>12 Q What would you need to do in order to</p> <p>13 doubt the assumption in your report, having</p> <p>14 read this document?</p> <p>15 A I would -- I would need some type of legal</p> <p>16 determination.</p> <p>17 Q And if the assumption was in fact</p> <p>18 incorrect and there were encumbrances on the</p> <p>19 DIA collection, would that increase or decrease</p> <p>20 its value?</p> <p>21 A What type of encumbrances?</p> <p>22 Q An encumbrance that prevents the sale of</p> <p>23 the DIA collection or a piece of it thereof?</p> <p>24 A The value would remain the same, whether</p> <p>25 the art could be sold or not is another story.</p>
<p style="text-align: right;">Page 327</p> <p>1 agree that the collection described in Exhibit</p> <p>2 A attached hereto --</p> <p>3 A I'm sorry, I'm not.</p> <p>4 Q Middle of the page.</p> <p>5 A Of page?</p> <p>6 Q Two.</p> <p>7 A I was on the wrong page. Sorry.</p> <p>8 Q It reads -- you see where I'm referring</p> <p>9 to?</p> <p>10 A I do.</p> <p>11 Q "The Arts Commission, The Founders Society</p> <p>12 Detroit Institute of Arts hereby agrees that</p> <p>13 the collection described in Exhibit A attached</p> <p>14 hereto in toto will be permanently retained</p> <p>15 with the Detroit Institute of Arts with no</p> <p>16 right of reservation on the part of either of</p> <p>17 them or the City of Detroit at any time to sell</p> <p>18 or otherwise dispose of said collection or any</p> <p>19 part therefore."</p> <p>20 You see that?</p> <p>21 A That's correct.</p> <p>22 Q Is that an encumbrance that you were</p> <p>23 referring to earlier to the art in question?</p> <p>24 A This is a legal determination, that I</p> <p>25 don't know whether it was an encumbrance or</p>	<p style="text-align: right;">Page 329</p> <p>1 Q In your opinion, do encumbrances usually</p> <p>2 increase or decrease the value of a collection?</p> <p>3 A The values remain the same.</p> <p>4 Encumbrances -- depending upon what the</p> <p>5 specific encumbrances are, basically determine</p> <p>6 whether the piece can be sold or not, but the</p> <p>7 value is the same.</p> <p>8 Q So if an encumbrance prevents a piece of</p> <p>9 art from being sold, wouldn't you agree with me</p> <p>10 that the marketable cash value is zero?</p> <p>11 A Then the -- no.</p> <p>12 The marketable cash value is what it is.</p> <p>13 Whether the piece can be sold or not is another</p> <p>14 story.</p> <p>15 Q You've never opined before that where</p> <p>16 contracts or law prevent a piece of art from</p> <p>17 being sold renders its value zero?</p> <p>18 A Have I opined in a report, according to</p> <p>19 the verbiage that you have just ascribed or</p> <p>20 whatever.</p> <p>21 Q Sure. Let's rephrase it.</p> <p>22 Have you ever opined that where a piece of</p> <p>23 art cannot be sold for some reason that its</p> <p>24 value is essentially zero?</p> <p>25 A No, I've never written that in my report.</p>

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1 (Deposition Exhibit 9, Article Entitled  
 2 "Unique Aspects of Appraising Large Scale Art,"  
 3 marked for identification as of this date.)  
 4 BY MR. ABEL:  
 5 Q I'm showing you a document that's been  
 6 marked Exhibit 9.  
 7 Is this an article that you wrote entitled  
 8 "Unique Aspects of Appraising Large Scale Art"?  
 9 A It is.  
 10 Q Do you know when you wrote this?  
 11 A I believe it was close to ten years ago,  
 12 but I'm not 100 percent certain since it's not  
 13 dated.  
 14 Q And do you recall a dispute with regard to  
 15 the disposition of the Tiffany Dream Garden?  
 16 A That is correct.  
 17 Q Am I correct that as part of that dispute,  
 18 the original -- one of the owners of the dream  
 19 garden wanted to sell the dream garden mosaic  
 20 and one was unable to because there were  
 21 landmark hearings that prevented the sale?  
 22 A That's correct.  
 23 Q And am I correct, looking at Page 80, the  
 24 first full paragraph, you wrote in the second  
 25 sentence, "In point of fact during this period

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1 the value of mosaic had changed from 10 million  
 2 or more which was a demonstrable value prior to  
 3 the landmark hearings to virtually zero while  
 4 the legal deliberations continued?  
 5 A That's correct.  
 6 Q Let's talk about another Fresco, the  
 7 Rivera Fresco.  
 8 Are you aware of the Rivera Fresco of the  
 9 DIA?  
 10 A Am I aware of it?  
 11 Q Yes.  
 12 A Is that the question?  
 13 Yes.  
 14 Q What is its name?  
 15 A What is the name of the Fresco?  
 16 Q Yes.  
 17 A It is called "The Power of Industry."  
 18 Q Did you discuss of the removal of the  
 19 Diego Fresco with anyone?  
 20 A Did I discuss it with anyone?  
 21 Q Yes.  
 22 A I opined on the fact whether it could be  
 23 removed or not. So we discussed it in  
 24 committee.  
 25 Q And do you recall what that discussion was

Page 332

1 in the committee?  
 2 A Yes, I do.  
 3 The -- there were two issues.  
 4 You want me to state them?  
 5 Q Did someone on the committee opine that  
 6 the Diego Rivera mural could be removed?  
 7 A Yes.  
 8 Q Who in the committee opined it could be  
 9 successfully removed?  
 10 A I think that was decided on consensus.  
 11 Q Who in the committee has experience in  
 12 removing large scale frescoes?  
 13 A In removing large scale frescoes?  
 14 Q Yeah.  
 15 A That would mean that you would be directly  
 16 involved with removing the frescoes themselves,  
 17 or with the fact that frescoes could be  
 18 removed.  
 19 Q Am I correct that one of the extraordinary  
 20 assumptions in your report was that the Diego  
 21 Rivera mural Detroit Industry can be removed  
 22 successfully?  
 23 A That is correct, I believe. I will check  
 24 my report to make sure it's written.  
 25 Q Looking at Page 14.

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1 A Thank you.  
 2 Q Extraordinary Assumption 3.  
 3 A Yes.  
 4 Q Okay. And who in your committee -- who in  
 5 your team, had experience in the removal of  
 6 large scale frescoes?  
 7 A When you say "experience," what exactly do  
 8 you mean?  
 9 Q Let's make it easier.  
 10 Has anyone in your team at VWA ever been  
 11 involved in the removal of a large scale Fresco  
 12 before?  
 13 A An active participant in the removal?  
 14 Q Either actually removing the large scale  
 15 Fresco or advising someone else on removing the  
 16 large scale Fresco?  
 17 A On having knowledge of removal of a large  
 18 scale Fresco.  
 19 Q No, experience.  
 20 So either consulted on the removal or  
 21 actually removed it; anyone on your team have  
 22 that kind of experience?  
 23 A Fresco, no; Mosaic, yes.  
 24 Q Who on your team had experience with  
 25 removal of large scale Mosaic?

Page 334

1 A I am the person.  
 2 Q You?  
 3 A Yes.  
 4 Q What large scale mosaics have you been  
 5 involved in the removal of?  
 6 A I opined on the possibility of removing  
 7 the Dream Garden Mosaic in Philadelphia.  
 8 Q Is that the only large scale Mosaic or  
 9 Fresco you've been involved in the removal of?  
 10 A Personally, but that depended upon  
 11 knowledge and analysis of the Tiffany Mosaics  
 12 that had been removed.  
 13 Q Am I correct that the Dream Garden Mosaic  
 14 in Philadelphia was originally designed for the  
 15 World Fair as being a -- from its inception a  
 16 piece of portable personal property?  
 17 A The answer is no.  
 18 Q You didn't write in your article the  
 19 unique aspects of appraising large scale art,  
 20 that despite, it's architectural structure --  
 21 sorry. I'm talking about a different item. I  
 22 think that's probably why we have confusion.  
 23 How large was the Dream Garden Mosaic?  
 24 A If my memory serves me correctly, it was  
 25 18 feet tall by 40 feet wide.

Page 335

1 Q And how was it affixed to the wall of the  
 2 building in which it was located?  
 3 A It was affixed in sections that were then  
 4 affixed to the wall.  
 5 Q So when it was originally put on the wall,  
 6 it was already in sections, correct?  
 7 A That is correct.  
 8 Q How large is the River Fresco of the DIA?  
 9 A I haven't, it's on -- first of all, the  
 10 Dream Garden Mosaic was on one wall. I don't  
 11 know the measurements of Diego Rivera Fresco,  
 12 but judging from my knowledge of the rooms of  
 13 both, its -- they are both very large scale,  
 14 and I cannot give you the exact comparison of  
 15 the dimensions for the Diego Rivera Fresco.  
 16 Q Am I correct that the Diego Fresco is  
 17 painted on the wall?  
 18 A The Diego Rivera Fresco is painted on the  
 19 wall.  
 20 Q It wasn't applied in sections like the  
 21 Dream Garden mural, correct?  
 22 A That is correct.  
 23 Q So in order to remove the Diego Fresco,  
 24 the Rivera Fresco, you would actually need to  
 25 cut the Diego Rivera Fresco in the middle or

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1 along one of the parts; is that right?  
 2 A No.  
 3 Q Well, what did you do to make the  
 4 determination as to how you could remove the  
 5 Diego Rivera Fresco without damaging it?  
 6 A I compared it to my knowledge of how other  
 7 frescoes have been removed in various  
 8 structures.  
 9 Q Is it your opinion that you take the  
 10 entire wall on which the Fresco is situated and  
 11 remove it in toto?  
 12 A Possibly. You take a strata of the wall.  
 13 Q What does that mean?  
 14 A Strata is exactly what strata means. It  
 15 means a layer of the wall.  
 16 Q Did you talk to anyone to make a  
 17 determination as to whether that was possible  
 18 at the DIA?  
 19 A No.  
 20 Q Have you ever opined as an expert in the  
 21 removal of such a large Fresco before?  
 22 A No.  
 23 Q Doesn't USPAP require personal property  
 24 that is affixed to real property to be valued  
 25 as a part of the real estate if it cannot be

Page 337

1 easily detached from the real estate?  
 2 A USPAP advises the appraiser to take that  
 3 into consideration.  
 4 Q You've opined on art restoration before,  
 5 haven't you?  
 6 A I have.  
 7 Q Would you agree with me that art  
 8 restoration is like plastic surgery in that  
 9 there have been many times where it has been  
 10 bungled and people have paid fortunes for it?  
 11 A There have been some times where it hasn't  
 12 been done successfully.  
 13 Q There's no guarantee that the Diego Rivera  
 14 Fresco could be removed and moved without  
 15 damages?  
 16 A There's no guarantee of anything.  
 17 Q Am I correct that the Diego Rivera Fresco  
 18 is tied to the City of Detroit?  
 19 MR. PEREZ: Objection to the form of the  
 20 question. Vague.  
 21 BY MR. ABEL:  
 22 Q Do you believe that the Diego Rivera mural  
 23 has a special significance to the City of  
 24 Detroit?  
 25 MR. PEREZ: Same objection.

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1 BY MR. ABEL:  
 2 Q You can answer.  
 3 A I don't even understand.  
 4 Everything has special significance.  
 5 Q Let me ask you a different question: Do  
 6 you believe that there would be an uproar in  
 7 the community about removing the Fresco from  
 8 Detroit?  
 9 MR. PEREZ: Object to the form of the  
 10 question.  
 11 A That requires speculation. I believe that  
 12 someone might -- people might be upset.  
 13 Whether that qualifies as an uproar or not, I  
 14 don't know.  
 15 BY MR. ABEL:  
 16 Q How long did it take for the Philadelphia  
 17 Landmarks department to resolve its dispute  
 18 over whether or not the Tiffany Garden could be  
 19 removed?  
 20 A The Philadelphia Landmarks Commission did  
 21 not resolve it.  
 22 Q Was that issue ever resolved as to whether  
 23 or not it could be moved?  
 24 A In the settlement of the case, the part of  
 25 the settlement was that the Pennsylvania

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1 Academy of Fine Arts, that now owns the Dream  
 2 Garden Mosaic, could remove it if they wished  
 3 to.  
 4 Q Do you have any opinion in this case as to  
 5 whether or not there could be any legal action  
 6 taken to prevent the removal of the Rivera  
 7 frescoes under either local, state or national  
 8 landmark designation requirements?  
 9 A Looking at the evidence that was  
 10 presented, we saw nothing in the -- I believe  
 11 National Register of Historic places, that  
 12 would prevent the removal of the Fresco.  
 13 Q What evidence did you look at?  
 14 A I believe we looked at the registry and,  
 15 seeing what type of restrictions were listed on  
 16 the registry, and made that determination from  
 17 what we looked at.  
 18 Q How much would it cost to remove the Diego  
 19 Rivera Fresco from the wall of the DIA?  
 20 A I assume it would be very costly.  
 21 Q Do you have any estimate as to what the  
 22 cost would be?  
 23 A No, I would assume a million dollars or so  
 24 or more.  
 25 Q Did you include that transaction cost in

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1 determining the marketable cash value for the  
 2 Diego Rivera Fresco?  
 3 A I did.  
 4 Q And in coming to that conclusion, what  
 5 specific cost did you determine would be  
 6 involved in removing the Fresco as opposed to  
 7 the costs of buyer's premiums and other issues?  
 8 A It would probably be, I'd assume, in the  
 9 range of 1 to \$3 million, but I didn't conduct  
 10 an exact survey of it.  
 11 Q You mentioned that other rooms, Frescoes  
 12 and murals have been removed during history in  
 13 your report; is that right?  
 14 A I did.  
 15 Q Are you aware of any damage that was done  
 16 to any of those murals, frescoes or rooms in  
 17 the removal process?  
 18 A Most of them have been removed  
 19 successfully.  
 20 Q You say most of them.  
 21 A Correct.  
 22 Q How many instances have there been where a  
 23 large scale Fresco or mural had been removed  
 24 from its location that was damaged in the  
 25 process?

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1 A I can't think of any.  
 2 Would it be appropriate to take a break  
 3 now?  
 4 Q Sure.  
 5 A I mean, I can hold out.  
 6 THE VIDEOGRAPHER: Go off the record. The  
 7 time is 5:12.  
 8 (Recess taken.)  
 9 THE VIDEOGRAPHER: Back on the record.  
 10 The time is 5:20.  
 11 BY MR. ABEL:  
 12 Q Sir, do you have any degree in economics?  
 13 A No.  
 14 Q Do you have a degree in business  
 15 administration?  
 16 A I have a designation as a certified  
 17 association executive, which involves business  
 18 administration, I presume.  
 19 Q Where did you get that certification from?  
 20 A That's a designation that's given by the  
 21 National Association of Association Executives.  
 22 Q Do any of the members of your team have a  
 23 degree in economics?  
 24 A As far as I know, no. I think Shawn might  
 25 have a minor in that, but I'm not 100 percent

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1 sure.

2 Q Any members of your team have an MBA?

3 A Not that I know of.

4 Q Any members of your team work for an

5 auction housework -- work for Sotherby's or

6 Christie's in the last ten years?

7 A I don't believe so.

8 Q Were you listening on the phone during the

9 Winston deposition?

10 A No.

11 Q To your knowledge, have you ever been

12 criticized by anyone in the art community?

13 A Everybody criticized everyone else.

14 I don't know to what you're referring.

15 Q Do you recall any specific criticisms to

16 any work that you performed by anyone in the

17 art community?

18 A Any appraisal?

19 Q Yeah.

20 A Well, I do a lot of expert witness

21 testimony. And there are -- when you're doing

22 an expert witness testimony, there are various

23 opinions about the quality of one's work,

24 especially the expert on the other side.

25 Q Has your work, in any case in which you

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1 provided expert opinion ever been criticized by

2 any court, arbitrator or tribunal?

3 A No.

4 Q Has any court, arbitrator, tribunal, on

5 which you have ever appeared to provide expert

6 advice, ever ignored your opinion?

7 A No.

8 Q Other than in the context of your expert

9 work, have your conclusions or appraisals ever

10 been criticized by anyone in the art community?

11 A Can you rephrase that question.

12 Q Sure. Actually, I'll skip over it.

13 Looking at your report, again, pages --

14 starting on Page 31. And, again, we're looking

15 at Exhibit 3.

16 Page 31 it starts, "State of the Current

17 Art Market."

18 Do you see that?

19 A I do.

20 Q Who drafted the section of your report

21 entitled "State of the Current Art Market,"

22 that runs from Page 31 until 41?

23 A Page 31 to 41; is that what you said?

24 Q Yes.

25 A Okay. I did, together with David Shapiro.

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1 Q What percentage of that was drafted by

2 you, as opposed to David Shapiro?

3 A I think we both did equal amounts.

4 Q Do you know which portions of that were

5 drafted by you as opposed to David Shapiro?

6 A We worked on it together.

7 Q Who's going to be testifying -- well,

8 strike that.

9 Who do you believe is the expert who will

10 be testifying at court regarding the opinions

11 expressed in your report?

12 A I will.

13 Q Do you believe you have the expertise

14 sufficient to opine on all of the subjects

15 identified in your report?

16 A I do.

17 Q You testified earlier that there were

18 issues with the data that was provided to you

19 by the DIA; is that right?

20 A I did.

21 Q Was one of the issues you believed existed

22 was that the data you were provided was not

23 searchable?

24 A That is correct.

25 Q Did you try to search it?

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1 A We did.

2 Q Was it a PDF?

3 A It was.

4 Q And was it a PDF containing approximately

5 17,000 pages?

6 A It was.

7 Q And how did you try to search it?

8 A By trying to sort it in various

9 categories, and it wouldn't respond.

10 Q Am I correct that searching is different

11 from sorting?

12 A They're aligned together.

13 Q Did you try to run a word search through

14 that \$17,000 -- sorry, 17,000-page PDF for any

15 specific words?

16 A Upon occasion we did.

17 Q Was it searchable?

18 A For specific words, I believe it was.

19 Q So when you write in your report that the

20 data you were provided was not searched, well,

21 that was incorrect, right?

22 A For the purposes that we needed it, no, it

23 was not searchable.

24 Q It was searchable but not sortable,

25 correct?

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1 A Correct.

2 Q But you testified and you indicated in

3 your report that it was not searchable; is that

4 right?

5 MR. PEREZ: Object to the form of the

6 question. Asked and answered.

7 BY MR. ABEL:

8 Q You can answer.

9 A I -- we did a -- random searches; it

10 wasn't useable for any substantive purpose.

11 Q You also received a copy of a document

12 we've been referring to as the "insurance

13 list"; is that right?

14 A That's right.

15 Q That's a searchable document as well?

16 A I believe so.

17 Q Do you know when you received that

18 document?

19 A I can't recall exactly, but I think it was

20 probably about a week before the report was

21 issued.

22 Q You also identified an issue with some of

23 the information you provided -- you were

24 provided by the DIA in that the file had

25 various items label as "unknown American"; is

Page 347

1 that right?

2 A I did.

3 Q When did you identify that issue with the

4 file?

5 A I'm sorry?

6 Q When did you identify that issue with the

7 file?

8 A When did I identify the issue?

9 Q Yes.

10 A Basically, at the beginning of my work.

11 Q Am I correct that -- and when did you

12 notify counsel of that issue with the file?

13 A The same day I was retained.

14 Q Am I correct that two days after you

15 identified the issue with that file you

16 received a new file with 17,000 pages with the

17 corrected information?

18 A I did not receive it. I don't know who

19 did. And we did receive documentation

20 afterwards, but I understand there were still

21 problems with sorting it.

22 Q Did you ever ask to discuss the DIA

23 collection with any curators at the museum?

24 A Did I not.

25 Q Why not?

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1 A Because it of the -- it was ascribed to me

2 that it was a rather hostile environment.

3 Q You didn't even ask to talk with the

4 curators?

5 A I believe I mentioned it would be a good

6 idea, and it wasn't followed through.

7 Q Who didn't follow through with it?

8 A I can't recall whether it was counsel or

9 not, but I expressed interest in doing it.

10 Q Are you aware of any appraiser in history

11 ever performing a valuation of 60,000 works in

12 two weeks?

13 A No.

14 Q Did you feel rushed in performing your

15 appraisal?

16 A I felt time constraints.

17 Q Were you able to complete all of the work

18 that you wanted to complete --

19 A I did.

20 Q -- in this two weeks?

21 A The answer to that question is yes.

22 Q Anything that you didn't do that you

23 wanted to do had you had more time?

24 A Work that we're doing at the moment.

25 Q In forming your opinions as to the value

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1 of the DIA collection, did you consider any

2 discount for a for sale?

3 A It's stated in my report that we did not.

4 Q Did you take into any delay in selling the

5 art?

6 MR. PEREZ: Object to form of the

7 question. Asked and answered.

8 A I don't understand "any delay in selling

9 the art."

10 BY MR. ABEL:

11 Q Well, let me take a step back.

12 You mentioned earlier that you're

13 currently doing work with regard to this

14 engagement.

15 What work are you doing currently?

16 A As I testified earlier in the day, we

17 are -- we are examining works that we did not

18 appraise individually, and we are basically

19 reviewing specific works in the collection of

20 the DIA.

21 Q In considering blockage discounts, am I

22 correct that you need to take into account how

23 much interest will be sacrificed in tying up

24 cash to purchase the arts, rather than letting

25 funds grow in a money market?

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1 A That is a consideration under certain  
 2 circumstances.  
 3 Q And did you take that into consideration  
 4 in forming your opinion here?  
 5 A We did not think blockage discount was  
 6 applicable, as I've testified on numerous  
 7 occasions today.  
 8 So, therefore, that determination was  
 9 extraneous.  
 10 Q Did you take into account whether the  
 11 expected increase in the value for the art  
 12 would be offset by the interest sacrificed by a  
 13 purchase?  
 14 A The answer to that question is the same as  
 15 the question before.  
 16 Q Is the answer "no"?  
 17 A No.  
 18 Q Did you take into account how much money  
 19 it will devalue over time?  
 20 A The answer is no, and the reason is stated  
 21 above.  
 22 Q Did you take into account whether there  
 23 would be any storage charges or cost for  
 24 curatorial services connected with the DIA  
 25 collection?

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1 A In the context of blockage discount, no.  
 2 Q Did you take that into account in any way?  
 3 A No.  
 4 Q Did you take into account whether the  
 5 Works of Art of DIA would deteriorate over time  
 6 and whether the services of surveyors would be  
 7 necessary?  
 8 A No.  
 9 Q Is Exhibit 3 your final report in this  
 10 case?  
 11 A No.  
 12 Q Do you have a supplemental report?  
 13 A It -- this, I have to discuss with  
 14 counsel.  
 15 Q Have you drafted something already?  
 16 A At the moment, no.  
 17 Q Would you like to submit a supplemental  
 18 report in this case?  
 19 A Again, I'd have to discuss it with  
 20 counsel.  
 21 Q I'm not asking what counsel want.  
 22 I'm asking: If you feel it's necessary to  
 23 submit a supplemental report?  
 24 A The report is called preliminary. It  
 25 would be -- it would be nice to submit a

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1 supplemental report.  
 2 Q And when would you intend on submitting  
 3 that report if you had your druthers?  
 4 A As soon as the report is ready.  
 5 Q And when do you expect the report to be  
 6 ready?  
 7 A I don't know, at this point.  
 8 Q Do you know whether Christie's or  
 9 Sotherby's sells unattributed Works of Art?  
 10 A On unattributed Works of Art?  
 11 Q Yes.  
 12 A Yes.  
 13 Q Do you know whether Christie's or  
 14 Sotherby's sells Potshards?  
 15 A Possibly.  
 16 Q Do you know if they sell textile  
 17 fragments?  
 18 A Possibly.  
 19 Q So you're not sure?  
 20 A It depends upon what's the specific  
 21 objects in question.  
 22 Q Who would -- who do you believe would  
 23 purchase the DIA art collection from auction?  
 24 A Are we talking about the entire  
 25 collection?

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1 Q Yes.  
 2 A Am I understanding your question properly,  
 3 that if the collection were to be offered as a  
 4 whole or on block, who would the purchasers be  
 5 at auction?  
 6 Q Yes.  
 7 A I don't believe it would be offered at  
 8 auction.  
 9 Q Are you aware of how the auction houses  
 10 advertise art that has been deaccessioned from  
 11 a museum for purposes of paying creditors or  
 12 paying operating expenses?  
 13 A I don't think the auction houses make any  
 14 distinction on what the purpose of selling the  
 15 deaccession works are. They just list it in  
 16 the provenance, if indeed they list it.  
 17 Q Are you aware of whether or not an auction  
 18 houses auction Works of Art deaccessioned by  
 19 museum for purposes other than buying new art  
 20 that they refrain from indicating the museum  
 21 provenance whenever possible in their  
 22 advertisements?  
 23 A Am I aware of that practice?  
 24 Q Yes.  
 25 A No, I'm not aware of that practice.

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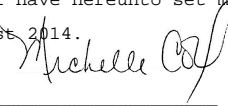
1 Q Have you ever talked to an auction house  
 2 how they would advertise an Work of Art that  
 3 had been deaccessioned from the museum other  
 4 than for the purposes of buying new art?  
 5 A Perhaps.  
 6 Q Well, the question is: Have you or  
 7 haven't you had that conversation?  
 8 A I'm not sure I understand the question.  
 9 The hypothetical or whatever, realistic  
 10 situation would be: Have I spoken to auction  
 11 houses personnel about how they would handle  
 12 Works of Art that have been deaccessioned from  
 13 a museum that was deaccessioned not for the  
 14 purpose of adding revenue to the acquisition  
 15 fund.  
 16 Is that the question that you're asked?  
 17 Q Yes.  
 18 A And the question is: Have I spoken to  
 19 auction house personal about that?  
 20 Q Yes.  
 21 A The answer is no.  
 22 MR. PEREZ: Are we're done?  
 23 MR. ABEL: I think we're done.  
 24 MR. PEREZ: Thank you.  
 25 MR. ABEL: Thank you.

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1 THE VIDEOGRAPHER: That concludes today's  
 2 deposition of Victor Wiener. The time is 5:36,  
 3 and that is the end of DVD No. 5.  
 4 (Time noted: 5:36 p.m.)  
 5  
 6 \_\_\_\_\_  
 7 VICTOR WIENER  
 8 Subscribed and sworn to before me  
 9 this \_\_\_\_\_ day of \_\_\_\_\_, 2014.  
 10  
 11 \_\_\_\_\_  
 12  
 13  
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C E R T I F I C A T E

1 STATE OF NEW YORK )  
 2 )  
 3 :ss  
 4 COUNTY OF NEW YORK )  
 5  
 6 I, MICHELLE COX, a Notary Public within  
 7 and for the State of New York, do hereby  
 8 certify:  
 9 That VICTOR WIENER, the witness whose  
 10 deposition is hereinbefore set forth, was duly  
 11 sworn by me and that such deposition is a true  
 12 record of the testimony given by the witness.  
 13 I further certify that I am not related to  
 14 any of the parties to this action by blood or  
 15 marriage, and that I am in no way interested in  
 16 the outcome of this matter.  
 17 IN WITNESS WHEREOF, I have hereunto set my  
 18 hand this 5th day of August 2014.  
 19   
 20 \_\_\_\_\_  
 21 MICHELLE COX, CLR  
 22  
 23  
 24  
 25

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1 Case Name: In re: City of Detroit, Michigan  
 2 Dep. Date: August 4, 2014  
 3 Deponent: VICTOR WIENER  
 4 Pg. Ln. Now Reads Should Read Reason  
 5 \_\_\_\_\_  
 6 \_\_\_\_\_  
 7 \_\_\_\_\_  
 8 \_\_\_\_\_  
 9 \_\_\_\_\_  
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 17  
 18 \_\_\_\_\_  
 19 VICTOR WIENER  
 20  
 21 Subscribed and sworn before me  
 22 This \_\_\_\_\_ day of \_\_\_\_\_, 2014.  
 23  
 24 \_\_\_\_\_  
 25 (Notary Public) MY COMMISSION EXPIRES:

http://www.yeslaw.net/ha3p

**Exhibit C**

## VALUATION CONCLUSIONS

In fulfillment of the appraisal assignment VWA reached the following valuation conclusion:

That the total value of the collection is **\$8,552,395,675** and probably more than that.

The appraised total has been determined as of July 25<sup>th</sup>, 2014.

## METHODOLOGY DETERMINING VALUE CONCLUSIONS

### **Methodology Step by Step Chart**

Step 1	Valuation of High-Value Works by VWA				
		<u># of Units</u>	<u>Low Value</u>	<u>High Value</u>	<u>Average Value</u>
		387	3,092,419,700	4,040,303,800	3,566,361,750
Step 2	Valuation of other High-Value Works performed by independent third parties (e.g., Christie's, Artvest, and Winston)				
		<u># of Units</u>			<u>Average Value</u>
		616			434,357,825
Step 3	Projected valuation of other works as measured by DIA's Insurance Value, and estimated for appreciation				
		<u># of Units</u>	<u>DIA Insurance Value</u>	<u>% Appreciation</u>	<u>Projected Value</u>
		16,378	631,949,458	64.6%	1,040,125,005
Step 4	Pricing matrix of remaining works based on average Christie's and Sotheby's sales price by department for 2013				
		<u># of Units</u>			<u>Average Value</u>
		42,844			3,511,551,095
Step 5	Combined value				
		<u># of Units</u>			<u>Total Average Value</u>
		60,225			8,552,395,675

## ASSIGNMENT

The following section discusses:

- The background of the assignment, in which specifics of the appraisal assignment are discussed
- The decision to accept the assignment
- The specific qualifications of VWA in fulfilling the assignment
- Time restrictions dictating the nature of the Appraisal Report

**Exhibit D**















77.49		582	Maya	Embracing Couple	600,000				75,000	75,000
77.5	175	308	Diego M. Rivera	Isabel B. Ford	1,250,000		300,000	3,000,000	500,000	3,000,000
77.63		553	Donatello	Freshland Copy of Zhang Xu's Writing of the Stone Record	200,000			15,000	5,000,000	15,000
77.71		533	Bambouye of Odo-Owa	Epa Cult Mask	15,000				15,000	15,000
77.72	282	91	Jean Francois de Troy	Luncheon with Figures in Masquerade Dress	2,500,000			40,000	2,000,000	1,020,000
77.78		581	Nazca Heavi	Ceremonial Tassle	60,000				70,000	70,000
77.81	283	182	Hans Holbein the Younger	A Woman	3,000,000		5,000,000	20,000,000	20,000,000	20,000,000
78.31		235	Henri Matisse	The Wild Poppies	800,000			32,500,000	15,000,000	32,500,000
78.32		236	Henri Matisse	The Wild Poppies	100,000			37,500,000	set	37,500,000
78.38		84	Jasper Francis Cropsey	Indian Summer	4,000,000		2,000,000		1,500,000	1,750,000
78.43	169		Unknown	Capital	20,000	8,500				8,500
78.47		539	Iranian	Achamensid Persian Spearman	75,000			2,000,000	1,000,000	2,000,000
78.59	284	240	John Everett Millais	Lovers Hours	1,200,000		3,000,000	3,500,000	3,500,000	3,500,000
78.87		479	Hale Woodruff	Ancestral Memory	150,000				50,000	50,000
79.143	85	176	Childe Hassam	Notre Dame Cathedral, Paris, 1888	3,500,000		1,500,000		900,000	1,200,000
79.179		579	Western Apache	Dila	NULL				75,000	75,000
79.21	339	293	Henri Puget	Le ravissement d'Helene	3,000,000		200,000		750,000	475,000
79.22	5	534	Bamileke	Maternity Figure	1,200,000			400,000	500,000	450,000
79.28.1		559	Suzuki Kiitsu	Reeds and Cranes	500,000			19,000	70,000	19,000
79.3		220	Itorosa	Gelede Cult Mask	15,000				750,000	750,000
79.30	285		Bartolomeo Manfredi	The Fortune Teller	2,500,000		1,500,000			1,500,000
79.33	86	468	Benjamin West	Death on the Pale Horse	2,500,000		400,000	4,000,000	2,000,000	4,000,000
79.34	124	180	Eva Hesse	Accession II	7,500,000			5,000,000	3,500,000	5,000,000
79.37		530	Hevde	Mask	85,000				11,000	11,000
80.104			Dan Flavin	Monument for V. Tatlin	35,000			3,150,000		3,150,000
80.25		553	Unknown	Tray with Design of Cranes and Chrysanthemums	250,000				125,000	125,000
80.39		550	Korean	Pillow	250,000			125,000	5,000,000	125,000
81.644		576	Medwaki	Bear Claw Necklace	30,000				150,000	150,000
81.695	340	139	Giovanni Battista Foggini	Cupid and Psyche	1,800,000		1,250,000		800,000	1,025,000
81.698		562	Easter Island	Gorget	NULL				250,000	250,000
82.26	87	2	John White Alexander	Basel for Music Room	1,300,000		400,000		50,000	225,000
82.27	341	372	Giovanni Francesco Susini	Bacchus and a Young Satyr	1,800,000		900,000		750,000	825,000
82.29		526	Mangbetu	Harp	320,000				40,770	40,770
82.3	88	223	Paul Memphig	The Moods of Time: Evening	2,000,000		50,000		750,000	400,000
82.33.A		552	Korean	Stationery Box with Design of Lotus Blossoms and Scrolls	155,000				75,000	75,000
82.49	6	535	Bena Lukua	Figure	1,500,000				600,000	425,000
82.64	97	538	Neo-Sumerian	Kiddeh of Lagash	30,000,000		20,000,000	6,500,000	3,000,000	6,500,000
85.3	90	268	Rembrandt Peale	The Court of Death	1,000,000		100,000		50,000	75,000
89.11	286	63	Giovanni Battista Cima	Madonna and Child	2,000,000		2,500,000		4,000,000	3,250,000
89.23	287	297	Guido Reni	Head of Christ Crowned with Thorns	2,200,000		700,000		1,000,000	850,000
89.30	288	18	Gerit Adriaensz. Berckheyde	View of the Grote Kerk in Haarlem	1,500,000		500,000		2,000,000	1,250,000
89.35	289	292	Jan Provost	The Last Judgment	3,500,000		7,000,000	17,500,000	8,000,000	17,500,000
89.39	290	89	Pieter de Hooch	Mother Nursing Her Child	2,000,000				1,500,000	1,000,000
89.44	291	457	Rembrandt Harmensz van Rijn	The Death of Lucretia (?)	1,000,000		250,000		150,000	200,000
89.46	292	367	Jan Havicksz Steen	Gambler's Ostracism	1,500,000		1,000,000	13,500,000	10,000,000	13,500,000
89.63	293	330	Peter Paul Rubens	The Meeting of David and Abigail	4,000,000		9,000,000	30,000,000	5,000,000	30,000,000
89.7		253	Franciabigio	Portrait of a Man	NULL				5,000,000	5,000,000
89.70		294	Bartolome Estéban Murillo	The Immaculate Conception	5,000,000			125,000	12,000,000	12,000,000
90.1S14462		529	Kongo	Wife Figure	180,000				3,000	3,000
F1983.124		347	Charles Shaefer	Wheels	190,000			550,000	175,000	550,000
F1983.73		376	Bob Thompson	The Death of Camilla	30,000				50,000	50,000
F66.40		397	Rembrandt Harmensz van Rijn	Adoration of the Shepherds	NULL				5,000	5,000
F74.21		573	Islamic	Jewel Box inscribed "Amir Bakharaz"	10,000			2,500	Unable to value	2,500
F74.36		311	Diego M. Rivera	The Meal	15,000			175,000	50,000	175,000
F76.14		131	Albrecht Dürer	Adam and Eve	350,000				650,000	650,000
F76.92	342	120	Donatello	The Nativity (Ford Nativity)	2,000,000		225,000		4,500,000	2,362,500
F77.104		132	Thomas Cooperthwaite Eakins	Three Female Nudes	40,000			50,000	25,000	50,000
F80.215		125	Robert S. Duncanson	Ellen's Isle, Loch Katrine	300,000				250,000	250,000
F81.57		1	Robert Adams	Elizabeth Bathurst (Lady Eastlake)	8,500			6,250	18,000	6,250
F82.198		41	Jean Baptiste Carpeaux	Neapolitan Fishboy	NULL			162,500	45,000	162,500

**Exhibit E**

Rom. marble torso of Apollo

Inv. 26.122

1<sup>st</sup> AD

58 x 30 x 2 1/4 in

DFA Ins. value = \$150,000 c 1/6/97

Christie's = \$800,000 - \$2,500,000

w/curds, no strap

shorter, 3 1/2 in Christie's NY 6 June 2013, lot 610 - Realized \$195,750 ✓

2 3/4 in shorter, w/head " NY 10 Dec. 2004, lot 567 - Realized \$231,500

w/ head 4 1/2 in slightly shorter " NY 13 June 2000, lot 365 - Realized \$160,000 \*

drap support H. 5 9/16 in, no strap Sotheby's pg. 1 - #9 - 4 June 2014 - Realized \$965,000 - ex Toledo mus \*

14 5/8 in

23 1/2 in, w/strap

20 in, w/strap

only 9 3/4 in

#83

#65 - 7 June 2007 - Realized \$30,000

pg. 2 - #43 - 7 June 2007 - Realized \$90,000

#69 - 5 Dec. 2007 - Realized \$67,000

Bist

2013  
2000

\$195,750 [20% B.P.] = Hammer \$163,125

160,000

2014

965,000

2014-S

\$965,000 = 100,000 x 25% = 25,000 B.P. Hammer B.P. <25%> MCV  
840,000 % 120% = 700,000 + 140,000 B.P. = 800,000 + 165,000 <800,000> 600,000

2013-C

\$195,750 = 75,000 x 25% = 18,750 B.P.  
102,000 % 120% = 85,000 + 17,000 B.P. = 169,000 + 35,750 <49,000> 129,000

2000-C

\$160,000 = 80,000 x 17.5% = 14,000 B.P.  
69,000 % 110% = 60,000 + 6,000 B.P. = 140,000 + 20,000 <35,000> 105,000

105,000 -> 760,000

\$400,000 -> \$800,000

Christie's = FMV, so ~60% = MCV, so \$480,000 - 1,500,000

**Exhibit F**

Mesopotamian Relief  
NR. E. (Babylonian) glazed tc & brick panel from Ishtar Gate w/  
Snake-dragon  
DIA ins. value = \$1,000,000 c 2/12/01  
Inv. 31.25  
Artvest value = \$50,000,000

604-562 BC  
45 1/2 x 65 3/4 in (115.6 cm x 167.0 cm)

Pub. refs in email

Parts of Gate in other museums: Louvre, Met, RISD, MFA-Boston,  
Yale (1930.372) 31.13.2 (31.652) (31.898)

maybe this on same order as the Mesopotamian limestone Relief-  
so, \$30-50 million ✓  
20-40

Artvest = FMV, so  $\approx 60\% =$  MCV, so  $\approx$  \$30 million



**Exhibit G**

1 UNITED STATES BANKRUPTCY COURT  
2 EASTERN DISTRICT OF MICHIGAN  
3 SOUTHERN DIVISION

4 In re: )  
5 CITY OF DETROIT, MICHIGAN, )  
6 Debtor. ) Chapter 9  
7 vs. ) Case No. 13-53846  
8 -----) Hon. Steven W. Rhodes

9  
10  
11  
12  
13 VIDEOTAPED DEPOSITION OF ELIZABETH VON HABSURG

14 New York, New York

15 Thursday, July 31, 2014  
16  
17  
18  
19  
20  
21  
22  
23

24 Reported by:  
25 MICHELLE COX  
JOB NO. 215820

Page 2

1  
2  
3  
4                                 July 31, 2014  
5                                 9:04 a.m.  
6  
7             Videotaped Deposition of ELIZABETH VON  
8 HABSURG, held at the offices of Jones Day,  
9 222 East 41st Street, New York, New York,  
10 pursuant to Notice, before Michelle Cox, a  
11 Notary Public of the State of New York.  
12  
13  
14  
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22  
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24  
25

Page 3

1     A P P E A R A N C E S :  
2  
3                                 HONIGMAN MILLER SCHWARTZ AND COHN LLP  
4                                 Attorneys for Detroit Institute of Fine Arts  
5                                 2290 First National Building  
6                                 660 Woodward Avenue  
7                                 Detroit, Michigan 48226-3506  
8     BY:     ARTHUR T. O'REILLY, ESQ.  
9  
10                                 JONES DAY  
11                                 Attorneys for City of Detroit  
12                                 51 Louisiana Avenue NW  
13                                 Washington, D.C. 20001-2113  
14     BY:     GEOFFREY S. IRWIN, ESQ.  
15  
16                                 KIRKLAND & ELLIS LLP  
17                                 Attorneys for Syncora  
18                                 300 North LaSalle  
19                                 Chicago, Illinois 60654  
20     BY:     LALLY A. GARTEL, ESQ.  
21  
22  
23  
24  
25

Page 4

1     A P P E A R A N C E S :  
2  
3                                 DENTONS  
4                                 Attorneys Official Committee of Retirees  
5                                 1221 Avenue of the Americas  
6                                 New York, New York 10020-1089  
7     BY:     ARTHUR H. RUEGGER, ESQ.  
8  
9                                 CLARK HILL PLC  
10                                 Attorneys for Detroit Retirement Systems  
11                                 212 East Grand River  
12                                 Lansing, Michigan 48906  
13     BY:     MICHAEL J. PATTWELL, ESQ.  
14  
15     ALSO PRESENT:   Nicholas Guzman, Videographer  
16  
17  
18  
19  
20  
21  
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24  
25

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1                                 INDEX  
2     WITNESS                                 EXAMINATION BY                                 PAGE  
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6                                 EXHIBITS  
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8     Exhibit 1     Binder                                 69  
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Page 6

1 IT IS HEREBY STIPULATED AND AGREED  
 2 by and between the attorneys for the respective  
 3 parties herein, that filing and sealing be and  
 4 the same are hereby waived.  
 5 IT IS FURTHER STIPULATED AND AGREED  
 6 that all objections, except as to the form of  
 7 the question, shall be reserved to the time of  
 8 the trial.  
 9 IT IS FURTHER STIPULATED AND AGREED  
 10 that the within deposition may be sworn to and  
 11 signed before any officer authorized to  
 12 administer an oath, with the same force and  
 13 effect as if signed and sworn to before the  
 14 Court.  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

Page 8

1 teleconference, can you please identify  
 2 yourself for the record?  
 3 MR. PATTWELL: Yes.  
 4 Michael Pattwell, Clark Hill on behalf of  
 5 the Detroit Retirement Systems.  
 6 THE VIDEOGRAPHER: Anybody else?  
 7 MR. CHANDLER: Nicholas Chandler for  
 8 Chadbourne on behalf of Assured Guaranty  
 9 Municipal Corp.  
 10 THE COURT REPORTER: Can you speak up.  
 11 I'm sorry. I didn't get that.  
 12 MR. CHANDLER: Nicholas Chandler, for  
 13 Chadbourne & Parke, on behalf of Assured.  
 14 THE VIDEOGRAPHER: Anybody else?  
 15 Will the court reporter please swear in  
 16 the witness.  
 17 E L I Z A B E T H V O N H A B S B U R G, called as  
 18 a witness, having been duly sworn by a Notary  
 19 Public, was examined and testified as follows:  
 20 EXAMINATION BY  
 21 MR. O'REILLY:  
 22 Q Good morning, would you please state your  
 23 name for the record, please.  
 24 A Elizabeth von Habsburg.  
 25 Q My name is Arthur O'Reilly. I represent

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1 THE VIDEOGRAPHER: Good morning. This  
 2 begins Tape No. 1 of the videotaped deposition  
 3 of Elizabeth von Habsburg on July 31, 2014, in  
 4 the matter of In re: City of Detroit Michigan,  
 5 Debtors.  
 6 This case was filed in the United States  
 7 Bankruptcy Court, Eastern District of Michigan,  
 8 Case No. 13-53846.  
 9 Today's deposition is being held at the  
 10 law offices of Jones Day, LLP, located at 222  
 11 East 41st Street, New York, New York 10017.  
 12 The time on the record is now 9:06 a.m.  
 13 My name is Nicholas Guzman, I'll be the  
 14 legal video specialist. The court reporter  
 15 today is Michelle Cox, both on behalf  
 16 Litigation Services.  
 17 At this time I'd ask counsel to please  
 18 introduce themselves for the record.  
 19 MR. O'REILLY: Arthur O'Reilly on behalf  
 20 of the Detroit Institute of Arts.  
 21 MR. IRWIN: Jeff Irvin, Jones Day, on  
 22 behalf of the City of Detroit.  
 23 MS. GARTEL: Lally Gartel, Kirland &  
 24 Ellis, on behalf of Syncora.  
 25 THE VIDEOGRAPHER: Also present via

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1 the Detroit Institute of Arts, and I'm going to  
 2 be asking you a few questions today.  
 3 Is that okay?  
 4 A Yes.  
 5 Q Have you had your deposition taken before?  
 6 A I have.  
 7 Q Okay. And have you given any testimony at  
 8 trial?  
 9 A I have.  
 10 Q So are you familiar with deposition rules,  
 11 if you will?  
 12 A To the extent that I've encountered them.  
 13 Q Okay. Fine.  
 14 So we have -- we have a court reporter  
 15 here who will be taking down your testimony,  
 16 both in writing and on video.  
 17 So to the extent possible, if you could  
 18 give me a verbal response when a question is  
 19 asked, either "yes" or "no," that will be  
 20 great, rather than a mm-mm or something like  
 21 that, which is less easy to understand on a  
 22 written transcript.  
 23 Okay?  
 24 A Yes.  
 25 Q And if at any point you don't understand

Page 10

1 one of my questions, please feel free to  
 2 clarify.  
 3 A Thank you.  
 4 Q Is there any reason why you can't give  
 5 your full and complete testimony today?  
 6 A No.  
 7 Q Good. Okay.  
 8 You are here in your capacity as an expert  
 9 on behalf of Kirland & Ellis and Syncora,  
 10 correct?  
 11 A That's correct.  
 12 Q Have you been retained by anybody else?  
 13 A No, I have not.  
 14 Q Okay. And you're with the firm of Winston  
 15 Art Group; is that correct?  
 16 A That's correct.  
 17 Q Tell me a little bit about your  
 18 professional experience.  
 19 A I started my career in the art world at  
 20 Christie's in 1982. I ran the appraisal  
 21 department. I was involved with handling  
 22 appraisals for high net worth clients and for  
 23 multi-departmental appraisals.  
 24 After Christie's I moved to another  
 25 auction house called Habsburg & Feldman, which

Page 12

1 A That's correct.  
 2 Q That was based upon a valuation performed  
 3 by you and Winston Art Group?  
 4 A That's correct.  
 5 Q When were you first contacted about doing  
 6 any work in relationship to the City of Detroit  
 7 bankruptcy?  
 8 A I would have to look back at my files, but  
 9 several months ago.  
 10 Q Was it in 2014?  
 11 A I would have to look at my files. I don't  
 12 have that here.  
 13 Q Is there anything that would refresh your  
 14 recollection besides your file?  
 15 A No, not unless the counsel has those  
 16 records here.  
 17 Q Your compliant with USPAP, correct?  
 18 A That's correct.  
 19 Q And what does "USPAP" stand for?  
 20 A Uniform Standards of Professional  
 21 Appraisal Practice.  
 22 Q Okay. And does USPAP have a standard that  
 23 requires that you keep a file?  
 24 A Yes, it does.  
 25 Q Okay. And so you keep a file in

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1 then became Habsburg. I was director of the  
 2 estates and appraisals department at that firm.  
 3 I was there for four years, handling, again,  
 4 high net worth clients, handling appraisals,  
 5 getting property up for sale.  
 6 And I then moved to a firm that was called  
 7 Masterson & O'Connell, which then became Gurr  
 8 Johns after a number of years, hence the name  
 9 changes.  
 10 I was president of that firm for 18 years.  
 11 That firm was an art advisory and appraisal  
 12 firm not an auction house.  
 13 And there I handled all the high net worth  
 14 clients. I handled purchases and sales;  
 15 oversaw the operations of the U.S. firm.  
 16 And in 2010, I joined Winston Art Group,  
 17 where I am managing director of the firm.  
 18 Winston Art Group is the foremost  
 19 independent art advisory appraisal firm in the  
 20 U.S., headquartered in New York, offices in LA,  
 21 Boston, Palm Beach, Houston, Denver,  
 22 representatives in Geneva and London.  
 23 Q Great. Thank you.  
 24 And you produced an expert report; is that  
 25 correct?

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1 compliance with USPAP, correct?  
 2 A Absolutely.  
 3 Q Okay. Did you bring it with you today?  
 4 A No, I did not.  
 5 Q Is there a reason why you didn't bring it  
 6 today?  
 7 A No.  
 8 Q Nobody told you not to bring it today?  
 9 A No.  
 10 MR. O'REILLY: Counsel, I believe a letter  
 11 was sent to you about that file. If it's  
 12 possible to get it today, would be great. If  
 13 not possible, we understand.  
 14 MS. GARTEL: We can look into it.  
 15 MR. O'REILLY: Okay. Thank you.  
 16 MR. IRWIN: May I just ask a clarifying  
 17 question.  
 18 Has Syncora produced what it understands  
 19 to be the reliance file that was requested in  
 20 connection with document requests in a recent  
 21 letter supporting Ms. von Habsburg's report.  
 22 MS. GARTEL: We're in the process of  
 23 putting it together.  
 24 MR. IRWIN: Okay.  
 25

litig://www.yeslaw.net/hab3p

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1 BY MR. O'REILLY:  
 2 Q So you don't remember when you were first  
 3 contacted.  
 4 Do you remember who first contacted you?  
 5 A Yes, I do.  
 6 Q Who was that?  
 7 A Gary Piattoni.  
 8 Q Can you spell that name for the court  
 9 reporter?  
 10 A I hope I'm spelling it correctly.  
 11 It's Gary, G-A-R-Y. Piattoni,  
 12 P-I-A-T-T-O-N-I, I believe.  
 13 Q And who is he or who is he associated  
 14 with?  
 15 A Gary Piattoni is somebody that I worked  
 16 with years ago when I was at Christie's. And  
 17 he is an independent advisor, I believe, an  
 18 appraiser, in the Midwest.  
 19 Q Okay. Was he called on anybody's behalf?  
 20 A I believe he was calling on behalf of the  
 21 law firm.  
 22 Q The law firm of Kirkland & Ellis?  
 23 A Correct.  
 24 Q Okay. Other than Kirkland & Ellis, did  
 25 anybody else contact you with regard to the

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1 Q Okay. Your report references a date of  
 2 March 25th, of 2014, I believe.  
 3 What does that date refer to?  
 4 A When we're asked to do an appraisal, we  
 5 always ask for an effective date. And that was  
 6 the date that was given to us.  
 7 Q And what does "effective date" mean?  
 8 A Meaning the date as -- as of which the  
 9 values are calculated.  
 10 Q Okay. So by March 25th of 2014, you had  
 11 already calculated your values?  
 12 A No, you don't have to have it -- you don't  
 13 have to calculate it before the date. The date  
 14 might be five years ago.  
 15 The effective date is the date as of which  
 16 you look at the market and see what the values  
 17 are.  
 18 Q Okay. So I just want to pinpoint what  
 19 that means. It's an effective date.  
 20 Is it arbitrarily selected?  
 21 A It's -- what do you mean by "arbitrarily"?  
 22 Q Who chose that date?  
 23 A The law firm.  
 24 Q Okay. Do you know why they chose that  
 25 date?

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1 City of Detroit bankruptcy?  
 2 A No.  
 3 Q Nobody from Weil Gotshal?  
 4 A No.  
 5 Q Okay. Nobody from FGAC, which is  
 6 Financial Guaranty Assurance Corporation, or  
 7 something similar to that?  
 8 A No.  
 9 Q Okay. Anybody from Houlihan Lokey?  
 10 A No.  
 11 Q Okay. So you can't remember when it was.  
 12 Do you remember when you were engaged?  
 13 A Again, I don't remember the date.  
 14 Q Can you give me an approximate period of  
 15 time in which that -- that happened?  
 16 A I would say approximately -- what do we  
 17 know.  
 18 Approximately four -- four to five months  
 19 ago. I'm guessing, though. I really have to  
 20 look to --  
 21 Q Sure.  
 22 A -- give you an accurate answer.  
 23 Q When did you finish your work on the fair  
 24 market value appraisal?  
 25 A About a week ago.

Page 17

1 A I do not.  
 2 Q Were you doing work prior to March 25,  
 3 2014?  
 4 A I believe we were. I don't have the exact  
 5 dates.  
 6 Q Do you know how long before?  
 7 A Again, I don't have the dates.  
 8 Q Was it more than a month?  
 9 A I would love to help you, but I don't have  
 10 the date on which we were asked to begin.  
 11 Q Does the date that you began, is that  
 12 relevant in any respect to the report that you  
 13 rendered?  
 14 A In what sense?  
 15 Q I don't know.  
 16 I'm just trying to figure out if you have  
 17 an effective date. You told me it was given to  
 18 you by the law firm.  
 19 You said that you started sometime prior  
 20 to that, correct?  
 21 A I believe so. Honestly, I would need -- I  
 22 need to look at my notes or at our agreement  
 23 letter --  
 24 Q Right.  
 25 A -- to give you an exact date.

litig://www.yeslaw.net/ha3p

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1 Q Which you didn't bring today?  
 2 A Correct.  
 3 Q You have an appraisal file.  
 4 Whose benefit is that for?  
 5 A I don't understand that question.  
 6 Q Why do you keep an appraisal file?  
 7 A Part of USPAP.  
 8 Q Okay. Is that the only reason why you  
 9 keep it?  
 10 A No, also for our own records.  
 11 Q Okay. Does USPAP contemplate why you  
 12 might keep a record like that?  
 13 A They don't specify in USPAP why a record  
 14 needs to be kept. They just state that it  
 15 does.  
 16 Q Okay. Do your clients ever ask for that  
 17 record?  
 18 A Very rarely.  
 19 Q Okay. If they ask for it would you give  
 20 it to them?  
 21 A If our clients asked us to give it them,  
 22 yes, except if there is anything confidential  
 23 in there between, say, an attorney and us.  
 24 Q Understood.  
 25 You said you finished your work two weeks

Page 20

1 Have you ever spoke with Victor Weiner?  
 2 A I've spoken with Victor Weiner; not in  
 3 reference to this case.  
 4 Q Thank you. Perfect.  
 5 Your expert report includes a biography of  
 6 yourself and also a description of your firm,  
 7 correct?  
 8 A Correct.  
 9 Q Is that complete and accurate?  
 10 A Yes.  
 11 Q Is it up to date?  
 12 A Yes, it is.  
 13 Q Are there any licenses or accreditations  
 14 that are not listed in your biography?  
 15 A Unfortunately, the appraisal business, as  
 16 the Wall Street Journal said, our business is  
 17 one of the largest legal economies to be  
 18 largely unregulated.  
 19 So whereas -- as chair of the present  
 20 foundation in Washington, D.C., I would love to  
 21 see accreditation for our appraisers.  
 22 For personal property, there is none.  
 23 There are certifications. And I do have  
 24 certification.  
 25 Q Okay. What are those certifications that

Page 19

1 ago?  
 2 A No. I said about a week ago.  
 3 Q Sorry. A week ago. Thank you.  
 4 A week ago is when you finished your work  
 5 on this project; is that correct?  
 6 A Correct.  
 7 Q Okay. During the course of the time that  
 8 you were first contacted, until today, and  
 9 leaving aside communications with your lawyers  
 10 for the moment, have you discussed your  
 11 engagement or your testimony or the substance  
 12 of your report with anybody?  
 13 A Only internally with my colleagues.  
 14 Q And does one of your colleagues include  
 15 your appraisers?  
 16 A Absolutely, yes.  
 17 Q Anybody else?  
 18 A Not to my recollection.  
 19 Q So you never spoke with any of the other  
 20 experts in the case?  
 21 A The experts are our appraisers.  
 22 Q Excuse me. That was a bad question.  
 23 There have been other experts retained in  
 24 this case, including a guy by the name of  
 25 Victor Weiner.

Page 21

1 are not listed in your biography?  
 2 A There are none not listed in my biography.  
 3 Q Thank you.  
 4 You said it's unregulated.  
 5 What does that mean to you?  
 6 A To me that means that there are no  
 7 national registries for personal property  
 8 appraisers. There are no national credentials  
 9 such as real estate appraisers have in personal  
 10 property appraising.  
 11 Q So there's no requirement that you be a  
 12 member of a particular association to do  
 13 appraisals, correct?  
 14 A There's no requirement, but the IRS does  
 15 now require that appraisers conform to USPAP  
 16 when they're doing appraisals for IRS purposes.  
 17 Q So other than that qualification, there  
 18 are no requirements that an appraiser be a  
 19 member of a particular association, or be  
 20 regulated by a particular body, correct?  
 21 A That's correct.  
 22 Q Thank you.  
 23 Do you have any training in finance?  
 24 A In what sense?  
 25 Q Would you have an MBA?

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<p style="text-align: right;">Page 22</p> <p>1 A I do not have an MBA.</p> <p>2 Q Did you take any post Stanford courses on</p> <p>3 finances?</p> <p>4 A I took accounting and I took statistics.</p> <p>5 Q Where did you go to take those classes?</p> <p>6 A Columbia University -- excuse me.</p> <p>7 Columbia University Business School.</p> <p>8 Q What is your degree from Columbia</p> <p>9 University?</p> <p>10 A It's in international affairs.</p> <p>11 Q So you took a class on statistics.</p> <p>12 And what was the other?</p> <p>13 A Accounting.</p> <p>14 Q Accounting.</p> <p>15 Other than those two classes, did you take</p> <p>16 any other financial-related courses?</p> <p>17 A No. I took a lot of economics courses,</p> <p>18 but finance in particular, no.</p> <p>19 Q How many economic courses did you take?</p> <p>20 A Goodness. Several.</p> <p>21 Q Sitting here today you can't recall?</p> <p>22 A No. It's --</p> <p>23 Q Your degree is not in economics, though,</p> <p>24 correct?</p> <p>25 A No, it's not in economics.</p>	<p style="text-align: right;">Page 23</p> <p>1 Q And your degree is not in statistics,</p> <p>2 correct?</p> <p>3 A Correct.</p> <p>4 Q And your degree is not in accounting,</p> <p>5 correct?</p> <p>6 A That's correct.</p> <p>7 Q Would you hold yourself out as an expert</p> <p>8 on any of those things?</p> <p>9 A No, I would not.</p> <p>10 Q I think you mentioned that Winston is a</p> <p>11 foremost independent art advisory firm?</p> <p>12 Did you say that before?</p> <p>13 A Art advisory?</p> <p>14 Q Yeah. I'm sorry. Advisory firm.</p> <p>15 A Correct.</p> <p>16 Q What does it mean to be an "independent</p> <p>17 art advisory firm"?</p> <p>18 A Art advisory and appraisal firm.</p> <p>19 "Independent" meaning we are neither an</p> <p>20 auction house nor a dealer.</p> <p>21 Q Does it mean anything else?</p> <p>22 A No.</p> <p>23 Q No.</p> <p>24 Why distinguish yourself in that fashion?</p> <p>25 A Because as an independent art advisory and</p>
<p style="text-align: right;">Page 24</p> <p>1 appraisal firm, we are acting in an objective</p> <p>2 manner when we're preparing either appraisals,</p> <p>3 or when we're assisting clients with buying and</p> <p>4 selling.</p> <p>5 We don't have a financial interest in the</p> <p>6 works that we are either appraising or</p> <p>7 assisting clients with buying or selling.</p> <p>8 Q So then by virtue of holding yourself out</p> <p>9 in that capacity, you are representing that you</p> <p>10 are objective and neutral?</p> <p>11 A Correct.</p> <p>12 Q And under the American Appraisal</p> <p>13 Association -- which you're a member of,</p> <p>14 correct?</p> <p>15 A Yes. The Appraisers Association of</p> <p>16 America, yes.</p> <p>17 Q That requires that when you work on behalf</p> <p>18 of a client that you remain neutral?</p> <p>19 A The Appraisers Association of America</p> <p>20 doesn't have that requirement.</p> <p>21 Q Does it have anything similar to that in</p> <p>22 the context of giving testimony in a case?</p> <p>23 A USPAP does.</p> <p>24 USPAP requires that when you perform an</p> <p>25 appraisal, that you act in an independent</p>	<p style="text-align: right;">Page 25</p> <p>1 manner.</p> <p>2 Q Do you have a position with the -- can I</p> <p>3 call it the "AAA"?</p> <p>4 A You can call it the "AAA."</p> <p>5 Q Because I'll put trig, otherwise.</p> <p>6 Do you have a position with the AAA?</p> <p>7 A I do.</p> <p>8 Q What is your position?</p> <p>9 A I'm on the board.</p> <p>10 Q Anything else, currently?</p> <p>11 Any other position on the AAA besides</p> <p>12 being on the board?</p> <p>13 A I'm on the board. I'm also co-chair of</p> <p>14 the annual appraisal luncheon for our award for</p> <p>15 excellency in the arts. And I'm co-chair of the</p> <p>16 advisory council.</p> <p>17 Q In the past, have you held any other</p> <p>18 positions?</p> <p>19 A I have been a member of the ethics</p> <p>20 committee.</p> <p>21 Q Anything else that you can think of?</p> <p>22 A Not that I can recall.</p> <p>23 Q Okay. Was Victor Weiner -- am I</p> <p>24 pronouncing his name right?</p> <p>25 A You are.</p>

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1 Q Is he a member of the AAA?  
 2 A He is -- I don't believe he's currently a  
 3 member of the AAA.  
 4 Q He used to be a member of the AAA?  
 5 A Yes, he did.  
 6 Q Do you know why he is no longer a member  
 7 of the AAA.  
 8 A No.  
 9 He was director of the Appraisers  
 10 Association of America, but that was going  
 11 back, I would say, approximately 8 to 10 years;  
 12 10 to 12 years ago.  
 13 Q So he wasn't a member; he was on staff?  
 14 A He was a director, but -- I'm sorry.  
 15 I don't know whether he was actually a  
 16 member or whether he was just director or first  
 17 a member and then director. I don't know  
 18 that -- the answer to that.  
 19 Q Do you know whether he was paid a salary  
 20 for the work that he did?  
 21 A Yes, as director he was paid a salary.  
 22 Q But he's no longer with the AAA?  
 23 A As I said, I don't know whether he's a  
 24 member now. But he's no longer a director of  
 25 the AAA.

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1 with the AAA, are you aware of any unethical  
 2 conduct?  
 3 A Not that I recall.  
 4 Q Any violations of any of the rules of the  
 5 AAA?  
 6 A Not that I can recall.  
 7 Q Do you know whether he was terminated?  
 8 A I don't recall.  
 9 Q How many times have you had your  
 10 deposition taken?  
 11 A Approximately ten.  
 12 Q Wow.  
 13 So you're good at this; maybe more than  
 14 some of us in the room.  
 15 How many times have you given trial  
 16 testimony?  
 17 A Say, approximately seven.  
 18 Q And those are listed in your bio, correct?  
 19 A They are.  
 20 Q No more other than that?  
 21 Sorry.  
 22 No other instances in which you either  
 23 gave deposition testimony or trial testimony,  
 24 other than what was listed in your biography?  
 25 A Except today.

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1 Q Do you know why he's no longer a director  
 2 of the AAA?  
 3 A I just remember that there was a need for  
 4 a change. I don't know whether it was his  
 5 decision or whether it was the AAA's decision  
 6 to make a change.  
 7 Q And as a member -- were you a member of  
 8 the board at the time?  
 9 A I don't believe I was, but I can't be  
 10 sure. I'm not sure of the timing.  
 11 Q Why was there a need for a change?  
 12 A I don't know. I don't recall why there  
 13 was a need for a change or whether it was his  
 14 decision or the board's decision to make a  
 15 change.  
 16 Q Did anything occur with respect to Mr.  
 17 Weiner at the time that gave the AAA concerns?  
 18 A I can't answer that question.  
 19 Q You can't because you don't know?  
 20 A I don't know.  
 21 Q You don't remember?  
 22 A I don't know. I don't remember.  
 23 I don't know whether I was on the board at  
 24 that time or not.  
 25 Q In the course of Mr. Weiner's relationship

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1 Q Except today. Correct.  
 2 So you can amend it after today.  
 3 A Correct.  
 4 Q I noticed one of them. One of them was  
 5 called Barnes.  
 6 Do you recall being engaged to provide  
 7 testimony in Barnes?  
 8 A Absolutely.  
 9 Q What was Barnes about?  
 10 A Barnes was a -- is a museum in  
 11 Philadelphia, and it was a case between the  
 12 museum itself and a group that was called "the  
 13 students."  
 14 And the museum wanted, for financial  
 15 reasons, to move to downtown Philadelphia, and  
 16 the students did not want the museum to move.  
 17 Q Just for clarification, who are the  
 18 students affiliated with?  
 19 A That, I don't know.  
 20 Q Do you know whether they were students of  
 21 the museum?  
 22 A I believe they -- some or all of them had  
 23 studied at the museum.  
 24 Q Do you know if they were students at  
 25 Lincoln University?

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1 A That, I don't know.  
 2 Q So you were retained, I gather, by the  
 3 museum?  
 4 A Correct.  
 5 Q And what work did you perform on behalf of  
 6 the museum?  
 7 A We performed an appraisal of many of the  
 8 Works of Art in the museum, for both fine art  
 9 and decorative art.  
 10 Excuse me. Sorry.  
 11 Q Why were you retained to do that work?  
 12 A They wanted to have an appraisal of  
 13 their -- the value of their collection, not  
 14 including the most major works, but including  
 15 all the remainder.  
 16 Q How many works were in the remainder  
 17 non-major works?  
 18 A I'm going back quite a long time, but I'd  
 19 say several thousand.  
 20 Q Less than 5,000?  
 21 A That, I can't remember. It's been a long  
 22 time.  
 23 Q Less than 10,000?  
 24 A Again, I can't give you a number.  
 25 Q Less than 20?

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1 A Correct.  
 2 Q Okay. And is insurance a type of  
 3 appraisal, insurance value?  
 4 A It's either called an "insurance value" or  
 5 a "retail replacement value," yes.  
 6 Q Are they synonymous, in your mind?  
 7 A Insurance appraisals and retail  
 8 replacement values are synonymous, yes.  
 9 Q What does that mean, "retail replacement  
 10 value"?  
 11 A Retail replacement value is a value that's  
 12 used to cover a client for an eventual  
 13 insurance loss or damage. So it's a value that  
 14 is comparable to what one would have to pay to  
 15 replace something at a dealer or a gallery.  
 16 Q Is it typically the highest value that any  
 17 appraiser would put on a particular work?  
 18 A Typically, yes, although there are always  
 19 exceptions.  
 20 Q So you said that "you."  
 21 And when you said "you," is that you and  
 22 Winston both, Winston Art Group?  
 23 Excuse me.  
 24 A In what reference?  
 25 Q I'm sorry. That was a bad question.

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1 A We just answered that question.  
 2 Q So sitting here today, you have no idea  
 3 what the size of the collection that you value  
 4 was?  
 5 A As we said, I imagine it was several  
 6 thousand, but I can't remember a precise  
 7 number.  
 8 Q Do you recall what type of appraisal you  
 9 did?  
 10 A In terms of?  
 11 Q Okay. We'll do this in the beginning.  
 12 I understand that there are different  
 13 types of appraisals that can be formed,  
 14 correct?  
 15 A Correct.  
 16 Q One of them is called a "fair market value  
 17 appraisal"; is that correct?  
 18 A That's correct.  
 19 Q Is one of them called a "marketable cash  
 20 value appraisal"?  
 21 A Yes.  
 22 Q And is one of them called a "liquidation  
 23 value appraisal"?  
 24 A That's not a type of appraisal that we do.  
 25 Q Okay. So you don't do liquidation values?

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1 You just testified that you don't do  
 2 liquidation value appraisals, correct?  
 3 A Correct.  
 4 Q Is liquidation valuation appraisal a type  
 5 of appraisal that can be performed?  
 6 A I believe it is, it's just not something  
 7 that we do.  
 8 Q When you said "we," you mean both you and  
 9 your firm?  
 10 A Correct.  
 11 Q Do you recall whether you did a fair  
 12 market value appraisal for Barnes?  
 13 A I believe we did, but, again, this was the  
 14 previous firm. I don't have access to those  
 15 files.  
 16 Q What was the name of the firm that you  
 17 were employed by?  
 18 A Gurr Johns.  
 19 Q Do you recall what the value was that you  
 20 placed on a portion of the collection that you  
 21 did examine or value?  
 22 A Again, I don't remember.  
 23 Q Was it in the millions?  
 24 A I don't recall. I'd have to take a look  
 25 at my old paperwork to tell you that.

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1 Q Sitting here today, can you tell me  
 2 whether it was more than 100 million?  
 3 A I would say it's probably not more than  
 4 100 million.  
 5 Q But you don't recall how many works you  
 6 valued?  
 7 A I do not.  
 8 Q Sitting here today, you can't tell me if  
 9 there was 100,000 objects?  
 10 A You've asked me that before and I told you  
 11 I cannot remember. I don't have that  
 12 paperwork.  
 13 Q How did you go about determining which  
 14 objects, the non-major works, as you referred  
 15 to them at Barnes, how did you go about  
 16 determining which ones to look at?  
 17 A They provided us with lists of works to  
 18 look at.  
 19 Q "They" meaning the museum?  
 20 A The museum, correct.  
 21 Q And you were retained by the actually  
 22 museum itself, correct?  
 23 A Yes, that's correct.  
 24 Q Not by a third party?  
 25 A Not as far as I recall, no. It was the

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1 artwork, correct?  
 2 A We did not.  
 3 Q Do you know the total size of the Barnes  
 4 collection?  
 5 A In numbers of objects?  
 6 Q Correct.  
 7 A I do not know.  
 8 Q So I don't need to ask the other follow-up  
 9 questions.  
 10 You'll have the same response if I ask  
 11 you: Is it greater than 100,000 or less than  
 12 100,000?  
 13 A That's correct.  
 14 Q Thank you.  
 15 Are you what's called a "general  
 16 appraiser"?  
 17 A I've been called that in the past, yes.  
 18 "General appraiser" is an odd term, not  
 19 really defined. So I started out as generalist  
 20 and then have since, throughout my long career,  
 21 specialized in certain areas.  
 22 Q As a "general appraiser," is that term  
 23 pejorative in any way?  
 24 A Not at all.  
 25 Q Okay. Do you have a specialty?

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1 museum.  
 2 Q Did you understand that to be the entirety  
 3 of the non-major works at the Barnes Museum?  
 4 A I cannot remember whether it was the  
 5 entirety or whether it was a selection of the  
 6 remainder.  
 7 Q You did not make the choice to -- about  
 8 which works to value, though, correct?  
 9 A That's correct.  
 10 Q Did you provide them with any advice or  
 11 opinions on which works to value?  
 12 A I don't believe we did.  
 13 Q Okay. What did the students want to  
 14 accomplish in that case?  
 15 A I believe that, from my recollection, that  
 16 the students wanted to have the institution  
 17 remain in suburban Philadelphia, in Marion.  
 18 Q And who wanted to move it?  
 19 A The museum.  
 20 Q And is the Barnes Museum a private museum?  
 21 A Very good question. I have not a clue.  
 22 Q There are other major works at the museum,  
 23 correct?  
 24 A That's correct.  
 25 Q You didn't value any of those works,

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1 A Yes, I do.  
 2 Q What is your specialty?  
 3 A I have a number of specialties, primarily  
 4 modern impressionist and contemporary art;  
 5 furniture and furnishings, mostly European;  
 6 silver, some porcelain.  
 7 Q And the areas in which people "specialize"  
 8 in the art world -- I'm sorry if that is an  
 9 overly general term -- what percentage would  
 10 you say that you specialized in?  
 11 Is it 20 percent of the total number of  
 12 things that people typically specialize in; is  
 13 it 10 percent?  
 14 I'm just trying to get a sense of how much  
 15 expertise there is there?  
 16 A Can you rephrase that question because I'm  
 17 not quite sure I understand.  
 18 Q Terrible question.  
 19 There are a number of different areas in  
 20 which people can specialize, correct?  
 21 A Correct.  
 22 Q And you've named a few that you specialize  
 23 in, correct?  
 24 A Yes.  
 25 Q And you don't hold yourself out to be an

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1 expert in all the other areas, correct?  
 2 A Absolutely.  
 3 Q I guess what I'm trying to figure out is:  
 4 Is there a way for me to know whether your  
 5 expertise covers 20 percent of the potentially  
 6 appraisable art market or 10 percent?  
 7 A That is a question I just can't even  
 8 answer.  
 9 Q Okay. Fine.  
 10 How many prior appraisals have you done?  
 11 A Personally or with my firm's?  
 12 Q Let's do personally first and then Winston  
 13 second.  
 14 A Okay. Winston has been in existence since  
 15 2010.  
 16 And we do -- "we," as a firm, do  
 17 approximately five to 600 appraisals per year.  
 18 Sometimes I work on an appraisal myself if it's  
 19 a discrete group of works. Other times and  
 20 most often we work as teams.  
 21 So I can't give you a precise number, but  
 22 only an overall idea of how many we do per  
 23 year.  
 24 Q Why do you work as teams?  
 25 A Because some -- various reasons.

1 We work as teams sometimes because if it's  
 2 a very important collection, we may have two or  
 3 even three specialists in the same area working  
 4 together in order to bounce ideas off each  
 5 other and discuss the relevant comparables and  
 6 so on.  
 7 And other times there are areas of  
 8 expertise that are very specialized, so we call  
 9 in a specialist who is a specialist in that  
 10 particular area to join in the team.  
 11 THE VIDEOGRAPHER: I'm sorry. Can we go  
 12 off the record for a quick second?  
 13 MR. O'REILLY: Yes.  
 14 THE VIDEOGRAPHER: The time is 9:38 a.m.  
 15 We're going off the record.  
 16 (Recess taken.)  
 17 THE VIDEOGRAPHER: This is the  
 18 continuation of Tape No. 1. The time is  
 19 9:40 a.m. We're back on the record.  
 20 MR. O'REILLY: Can we go off the record.  
 21 MR. IRWIN: Go off. I've got to --  
 22 THE VIDEOGRAPHER: The time is 9:40 a.m.  
 23 We're off the record.  
 24 (Recess taken.)  
 25 THE VIDEOGRAPHER: This is the

1 continuation of Tape No. 1. The time is 9:42  
 2 a.m. We're back on the record.  
 3 BY MR. O'REILLY:  
 4 Q When we went off the record you were  
 5 telling me that you worked in teams on occasion  
 6 for your appraisals with Winston, correct?  
 7 A Correct.  
 8 Q Okay. And you said one of the reasons why  
 9 you do that is because sometimes there's a work  
 10 of art where you need particular specialties,  
 11 right?  
 12 A That's correct.  
 13 Q Is another reason why you work as teams to  
 14 validate potential disagreements over numbers?  
 15 A Can you explain that question?  
 16 Q Sure.  
 17 If you're -- do you occasionally have --  
 18 lead a team of appraisers?  
 19 A Lead a?  
 20 Q Team of appraisers on a particular  
 21 project.  
 22 A Yes.  
 23 Q And when they're done with their work, do  
 24 you review that work?  
 25 A Yes.

1 Q Okay. Are there times when you see values  
 2 placed on works that you might disagree with or  
 3 have questions about?  
 4 A Absolutely.  
 5 Q And in those circumstances, is that one of  
 6 the occasions where you might work as a team to  
 7 discuss whether that number makes sense or not?  
 8 A Yes, we might work as a team, or I might  
 9 speak with one of the specialists or another  
 10 specialist might speak with that specialist.  
 11 Q Would you ever unilaterally disregard a  
 12 number?  
 13 A No.  
 14 Q Would USPAP allow you to do that?  
 15 A That's a circumstance I haven't run into.  
 16 I'd have to check USPAP to see whether they  
 17 would allow that.  
 18 Q In your experience, would it be good  
 19 practice to do that?  
 20 A No.  
 21 Q Any other reasons why you might work as a  
 22 team in coming up with a valuation?  
 23 A I suppose we might work as a team if we're  
 24 under time pressure and we needed a number of  
 25 specialists there on the same day in order to

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1 get the work done in an expeditious manner.

2 Q But in those circumstances, the individual

3 appraisers are still doing their work

4 individually; correct?

5 A That's correct.

6 Q You said you've done -- Winston does 5 to

7 600 appraisals a year.

8 What about you personally?

9 A I mentioned before it's very hard to

10 separate it out because sometimes I work

11 individually if it's a discrete group of works,

12 but other times I work with a team.

13 Q So in the past year can you recall how

14 many instances in which you worked solely on

15 your own?

16 A I can't recall the exact number, but I

17 would say it would be a small percentage.

18 Q And by small percentage, are we talking

19 about maybe ten appraisals?

20 A No. I'd say 10 percent, maybe. That's a

21 rough approximation.

22 Q I went to Georgetown where they don't

23 teach you math, so I'll have to get a

24 calculator later.

25 MR. RUEGGER: I was a math major there for

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1 Q Would those percentages apply, similarly,

2 across prior years?

3 We just talked about last year, which was

4 2000 -- well, I guess the last 12 months was

5 what I was referring to.

6 Were you understanding me to say the last

7 12 months?

8 A We do it on an annual basis.

9 Q So when you were giving me the 5 to 600

10 number, was that for 2013?

11 A Correct.

12 Q Okay. In prior years, would your numbers

13 have been about the same?

14 A Number of appraisals --

15 Q Correct?

16 A -- or percentages?

17 Q Number of appraisals.

18 A Yes, approximately the same.

19 Q And would the percentages have been

20 approximately the same?

21 A It should have been, yes.

22 Q Of those threes types of appraisals that

23 you have done with Winston, is there any in

24 which it's more likely to have higher values?

25 A Yes, it's more likely to have higher

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1 a year.

2 MR. O'REILLY: That explains a lot.

3 MR. RUEGGER: That was decades before you

4 got there.

5 BY MR. O'REILLY:

6 Q So what types of appraisals were those 5

7 to 600 done by Winston last year?

8 A A combination of retail replacement

9 appraisals, fair market value appraisals and

10 marketable cash appraisals.

11 Q No others?

12 A Not -- no others.

13 Q And can you tell me approximately what

14 percentage are in each type of appraisal?

15 A The actual percentage?

16 Q What percentage of the 600 is retail?

17 What percentage is FMV?

18 And which percentage is marketable cash?

19 A I'm going to make an educated guess,

20 because I don't have the numbers in front of

21 me. But probably 40 percent retail; 40 percent

22 fair market value; and 20 percent marketable

23 cash value.

24 But that's really a rough, off the cuff

25 idea.

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1 values in retail replacement appraisals.

2 Q Why is that?

3 A As I explained before, retail replacement

4 is used for insurance purposes to protect

5 clients, for risk management purposes. In the

6 event that something is lost or stolen or

7 damaged and they have to replace it in short

8 order.

9 And retail replacement value looks at what

10 one would have to pay at a high-end retail or

11 gallery in order to replace something in short

12 order.

13 Q What is the largest, in terms of value,

14 retail appraisal that you've done?

15 A Over a billion dollars.

16 Q Are you permitted to tell me who engaged

17 you for that?

18 A I am not.

19 Q Was it a private collector?

20 A I'm not allowed to talk about my other

21 appraisals.

22 Q And what prevents you from talking about

23 your other appraisals?

24 A NDAs. Nondisclosure agreements.

25 Q Okay. So sitting here today -- I just

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1 want to make sure I understand this -- you  
 2 won't be able to tell me whether you've  
 3 appraised works on behalf of museums?  
 4 A I cannot. Unless the institution or  
 5 person allows us to discuss an appraisal, we  
 6 are not allowed to discuss appraisals.  
 7 Q But I'm correct that if I were to ask you  
 8 to distinguish between private collectors or  
 9 museum collectors, because you have NDAs as to  
 10 some of them, you wouldn't be able to answer  
 11 for me a complete range of your experience in  
 12 that area, correct?  
 13 A I'm not sure I understand the question.  
 14 Q Really bad question again.  
 15 MR. O'REILLY: And, Counsel, I want to  
 16 make sure I understand your position on this.  
 17 Is it your position that your witness  
 18 cannot testify to the types of clients that  
 19 have engaged her in the aggregate?  
 20 MS. GARTEL: She can testify as to those  
 21 things she's permitted to testify under  
 22 agreements to which she's a party.  
 23 MR. O'REILLY: Can I go off the record for  
 24 this?  
 25 THE VIDEOGRAPHER: The time is 9:50 a.m.

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1 say probably, roughly, the same percentage.  
 2 But, again, these are rough numbers.  
 3 Q And what about marketable cash value?  
 4 A Interesting question.  
 5 Because are you asking who the property  
 6 belonged to or who asked us to do the appraisal  
 7 in that question?  
 8 Q I'd like to know both.  
 9 A Both.  
 10 Marketable cash value is usually used  
 11 for -- it's used either for divorce, family  
 12 division, or it's used for art as collateral.  
 13 In art as collateral appraisals we are  
 14 usually engaged by an institution, being a  
 15 bank, so --  
 16 Q Can you, sitting here today, think of any  
 17 instance in which you did a marketable cash  
 18 value for a museum?  
 19 A No, I cannot.  
 20 Q Sitting here today, can you think of any  
 21 instance in which you did an FMV for a museum?  
 22 A In what time period?  
 23 Q Since your time with Winston.  
 24 A Just appraisal.  
 25 Q Any others?

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1 We're off the record.  
 2 (Recess taken.)  
 3 THE VIDEOGRAPHER: This is the  
 4 continuation of Tape No. 1. The time is 9:55  
 5 a.m. We're back on the record.  
 6 MS. GARTEL: Counsel, could you please  
 7 reask the question?  
 8 MR. O'REILLY: Can you read back my  
 9 question.  
 10 (Record read.)  
 11 BY MR. O'REILLY:  
 12 Q Just let me ask a different question.  
 13 Within the retail appraisal category, are  
 14 you able to approximate for me how many of  
 15 those, or what percentage were done on behalf  
 16 of private collectors and those that were done  
 17 on museums or public clients?  
 18 A For retail replacement purposes, I'm  
 19 giving you an approximate, again, because I  
 20 don't have the figures in front of me. But  
 21 it's probably 90 percent private; 10 percent  
 22 public institutions.  
 23 Q Same question with regard to fair market  
 24 value?  
 25 A In terms of number of appraisals, I would

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1 A Probably several of them, but I don't have  
 2 those numbers in front of me, so I can't tell  
 3 you accurately.  
 4 Q Sitting here today, you can't recall any?  
 5 A I can't recall any, no.  
 6 Q Same question for retail; do you recall  
 7 any in which you did it on behalf of a museum?  
 8 A No.  
 9 Q So sitting here today, the only instance  
 10 that you can recall that you performed a  
 11 valuation on behalf of the museum is the case  
 12 that we're sitting in today?  
 13 A I believe we've done a number of smaller  
 14 ones for institutions and museums, but I can't  
 15 recall the number.  
 16 Q What would you have to do to refresh your  
 17 recollection?  
 18 A I'd have to look back over our records in  
 19 the office.  
 20 Q What is the largest appraisal that you've  
 21 done in terms of numbers of works?  
 22 A Last year we completed an appraisal that  
 23 was approximately 20,000 works.  
 24 Q And you cannot tell me who the client was,  
 25 correct?

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1 A I cannot.  
 2 Q And what type of appraisal was that?  
 3 A It was a fair market value appraisal.  
 4 Q You're able to tell me what the valuation  
 5 number was that you came up with?  
 6 A I cannot.  
 7 Q Are you able to tell me how long it took  
 8 you to perform that valuation?  
 9 A Yes. That valuation took over the course  
 10 of one year. Well, less than a year. Maybe  
 11 nine months; nine months to a year.  
 12 Q And is that a long time to do a valuation  
 13 of 20,000 works?  
 14 A I can't answer that question. Depends on  
 15 what the works are.  
 16 Q Was it a mass appraisal?  
 17 A A "mass appraisal"?  
 18 Can you define what you mean by "mass  
 19 appraisal."  
 20 Q Are you familiar with the term "mass  
 21 appraisal"?  
 22 A I am.  
 23 Q Tell me what your definition of mass  
 24 appraisal is.  
 25 A Mass appraisal is using a multiple for a

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1 Q This was FMV.  
 2 What was the next largest in terms of  
 3 number of works, FMV, that you've done?  
 4 A I can't recall exactly.  
 5 Q Are they typically as large as 20,000?  
 6 A No.  
 7 Q What's your typical FMV?  
 8 A There's no typical. Sometimes it's one  
 9 item; sometimes it's hundreds of items.  
 10 Q So when I asked you whether it was typical  
 11 and you said, no, you just mean that one was  
 12 atypical to you, correct?  
 13 A The 20,000, that one, yes, that was  
 14 atypical.  
 15 Q What was the largest appraisal that you've  
 16 done for a retail valuation, in terms of number  
 17 of works?  
 18 A I can't recall.  
 19 Q Would it have been larger than 20,000?  
 20 A No.  
 21 Q Smaller than 20,000?  
 22 A Correct.  
 23 Q So smaller than 10,000?  
 24 A Most likely, yes.  
 25 Q Are you able to give me the size in terms

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1 group of similar Works of Art. Oh, not Works  
 2 of Art. Sorry. Usually used in real estate.  
 3 So similar properties.  
 4 Q Anything else you can tell me about mass  
 5 appraisals?  
 6 A No, that is it.  
 7 Q Have you ever done a mass appraisal for  
 8 artwork?  
 9 A We've never called it a "mass appraisal,"  
 10 but we've used that concept from time to time  
 11 where there are hundreds of similar works,  
 12 where we've looked at a sample and extrapolated  
 13 from that.  
 14 Q But you wouldn't call it a "mass  
 15 appraisal"?  
 16 A No, we don't use that concept.  
 17 Q When you evaluated the 20,000 works that  
 18 we just spoke of, was it a mass appraisal?  
 19 A I just mentioned we don't do mass  
 20 appraisals. And -- we don't do mass  
 21 appraisals.  
 22 Q So you don't do mass appraisals. I see.  
 23 I apologize if I asked this question:  
 24 What type of appraisal was this 20,000?  
 25 A Fair market value.

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1 of value of the largest retail appraisal that  
 2 you've done?  
 3 A Yes. I believe it was over a billion  
 4 dollars.  
 5 Q Same question for FMV?  
 6 A The same answer.  
 7 Q Over a billion dollars?  
 8 A Yes.  
 9 Q And when you say "over a billion dollars,"  
 10 do you mean it's around a billion dollars?  
 11 Over a billion dollars could be  
 12 10 billion. I just want to get a bracket here.  
 13 A Between 1 and \$2 billion.  
 14 Q And when you give that answer for FMV, are  
 15 you talking about this current case?  
 16 A No, I'm not.  
 17 Q So you're excluding the current instance?  
 18 A Correct.  
 19 Q What was the largest appraisal you've done  
 20 in terms of work for number of works for  
 21 marketable cash value?  
 22 A Again, I'm going to give you an  
 23 approximate. Somewhere in the region of 100  
 24 works.  
 25 Q Can you give me the approximate value that

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1 you came up with for that project?  
 2 A I can't, no.  
 3 Q Would it have been as high as a billion  
 4 dollars?  
 5 A No.  
 6 Q Are you able to tell me whether any of  
 7 those -- were any of those projects or  
 8 appraisals done on behalf of a museum?  
 9 A Which ones are you referring to?  
 10 Q The largest fair market value appraisal,  
 11 the largest retail value appraisal and the  
 12 largest marketable cash value appraisal?  
 13 A No, other than the one we're working on  
 14 now.  
 15 Q Have you ever done an appraisal -- let me  
 16 back up.  
 17 What's your definition of a "fair market  
 18 value appraisal"?  
 19 A Fair market value appraisal, is -- and I'm  
 20 paraphrasing, is what a willing buyer will pay  
 21 to a willing seller, both knowledgeable of all  
 22 the relevant facts and under no duress.  
 23 Q Have you ever done an appraisal where the  
 24 world knew that the seller, knew the seller and  
 25 knew that the seller was not willing to sell?

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1 a potential seller to perform a fair market  
 2 value assessment?  
 3 A As I mentioned before, usually appraisals  
 4 are not done for selling purposes. They're  
 5 usually done for fair market value or for  
 6 retail replacement and marketable cash.  
 7 Q Is it appropriate to do a fair market  
 8 value appraisal, which presumes a  
 9 hypothetically willing seller, where the seller  
 10 is actually not willing to sell?  
 11 A I don't know how to answer that question.  
 12 Q In your experience, is it appropriate?  
 13 A I don't really understand your question.  
 14 Q Okay. Fair market value appraisals, as  
 15 you just explained it to me, involve a willing  
 16 seller -- it assumes a willing seller, correct?  
 17 A Willing buyer, willing seller.  
 18 Q Right.  
 19 A Yes.  
 20 Q Is it appropriate to do -- in your  
 21 experience, is it appropriate to do a fair  
 22 market appraisal where the seller is not  
 23 willing to sell?  
 24 A As I said, appraisals are not usually done  
 25 for sellers. If you're looking to sell

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1 A The seller?  
 2 Are we talking about -- an appraisal --  
 3 appraisals are usually done for -- not for  
 4 someone whose selling, if you understand what  
 5 I'm saying.  
 6 Q I do.  
 7 So in this case you were retained by  
 8 Kirkland & Ellis who is not a seller, correct?  
 9 A I don't understand the question.  
 10 Q Okay. Does Kirkland & Ellis have the  
 11 ability to sell the art collection at the DIA?  
 12 A I have no idea.  
 13 Q Do you understand them to be a seller?  
 14 A I don't understand them to be a seller.  
 15 Q They are not a seller, correct?  
 16 A I don't believe they are a seller.  
 17 Q And their client, Syncora, is not a  
 18 seller, correct?  
 19 A Correct.  
 20 Q Have you ever done an appraisal in a  
 21 situation where you are retained by a third  
 22 party and not by the seller to perform a fair  
 23 market value assessment?  
 24 A I don't understand the question. Sorry.  
 25 Q Are you usually retained by the seller, or

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1 something, you generally get auction estimates.  
 2 So it's a range of figures.  
 3 Appraisals are normally done to establish  
 4 a fair market value or marketable cash value or  
 5 a retail replacement value.  
 6 What the client decides to do with those  
 7 numbers is up to them. We're not determining  
 8 what they're using those numbers for in  
 9 providing an appraisal of marketable cash, fair  
 10 market value or retail replacement.  
 11 Q So is that a "yes" or a "no"?  
 12 A Well, I'd say I don't quite understand  
 13 your question. I'm just saying, you're talking  
 14 about sellers. And appraisals are generally  
 15 done -- fair market value appraisals are not  
 16 selling instruments. Fair market value  
 17 appraisals are done to establish a value, fair  
 18 market value. If somebody wants to sell,  
 19 they're going to usually ask for auction  
 20 estimates.  
 21 Q So under USPAP, is it appropriate -- which  
 22 you -- you comply with, correct?  
 23 A Correct.  
 24 Q And you're bound by USPAP, correct?  
 25 A Correct.

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1 Q Okay. Does USPAP permit you to perform a  
2 fair market value appraisal which assumes a  
3 hypothetically willing seller, where you know  
4 that the seller is not a willing seller?

5 A We are providing -- fair market value is a  
6 value that is a willing buyer, willing seller,  
7 but it's not -- we're not determining what the  
8 person who asked us to do the appraisal is  
9 using the appraisal for.

10 So the values are based on that premise;  
11 willing buyer, willing seller, all -- everyone  
12 knowledgeable of the facts.

13 So your question isn't really an accurate  
14 question, to ask for an appraisal.

15 Q It might not be accurate and it might be a  
16 bad question.

17 But are you able to answer it, other than  
18 as you answered it just now?

19 A No, that's my answer.

20 Q Okay. Does USPAP address a situation  
21 where you have a fair market value appraisal  
22 done where there's an unwilling seller?

23 A USPAP just does not address that.

24 USPAP gives parameters for doing  
25 appraisals, but doesn't talk about the

1 reasoning for someone to ask for an appraisal.

2 Q Have you ever done an appraisal where you  
3 knew that the seller was not a willing seller?

4 A I don't know the answer to that question  
5 because usually we're not asking our clients  
6 for their motivations. We're just responding  
7 to a request.

8 Q Sitting here today, do you recall ever any  
9 instance in which you provided an appraisal,  
10 fair market value appraisal, where the seller  
11 was not a willing participant?

12 A Again, you're talking about seller.

13 We're asked by a client to do an  
14 appraisal. And they may ask us to do a fair  
15 market value appraisal or a marketable cash  
16 appraisal or a retail replacement value  
17 appraisal. They're not telling us their  
18 motivations. They're just merely asking for an  
19 appraisal.

20 Q I understand that. And I thank you for  
21 that.

22 But I just want to ask -- have the  
23 question answered, which is: Sitting here  
24 today, are you aware of any circumstances in  
25 which you performed a fair market value

1 appraisal where you knew that the seller was  
2 not a willing seller?

3 A Again, you're talking about seller. You  
4 keep talking about seller. But we're doing an  
5 appraisal. We're not -- we're doing an  
6 appraisal for a client.

7 Whether the client is a -- what the  
8 motivations of the client are, I can't  
9 determine.

10 So you're talking about seller, but I  
11 don't know how that's relevant to an appraisal.

12 Q Understood.

13 And I'm not asking you to tell me whether  
14 you know for certain whether the motivation of  
15 the seller is X or Y. I'm just asking  
16 factually.

17 Have you ever addressed this situation  
18 where you factually knew, you personally knew  
19 that a potential seller didn't actually want to  
20 sell the property?

21 A "Potential seller," that's a different --  
22 whole different kettle of fish.

23 Yes, there have been situations in family  
24 division appraisals or estate appraisals when  
25 we were aware of family dynamics that cause one

1 party not to want to sell.

2 Q Okay. And that would require an order of  
3 the Court to actually accomplish the sale?

4 A I have no idea about the sale. We were  
5 only doing the appraisal.

6 Q Other than the family dispute, are you  
7 aware of any other circumstance in which you  
8 knew that the seller or potential seller was  
9 unwilling to sell?

10 A No, it's not usually something we get  
11 involved with.

12 Q Thank you.

13 You talked about the Barnes collection,  
14 which you were retained by the Barnes Museum.

15 Do you recall that testimony?

16 A Yes.

17 Q What is the largest engagement, in terms  
18 of objects and value that you've done on behalf  
19 of the museum?

20 A This appraisal that we've done now in  
21 terms of value; in terms of numbers of items,  
22 probably in a former company, would be Barnes.

23 Q Sitting here today, you don't recall the  
24 size in terms of the value you came up with for  
25 Barnes, correct?

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1 A I don't.

2 Q Or the numbers of objects you valued,  
3 correct?

4 A I don't.

5 Q Are there any special issues that come up  
6 when you value Works of Art in a museum?

7 A In what sense?

8 Q Sure.

9 So an FMV, in the usual case, you should  
10 consider restrictions or clouds on titles,  
11 correct?

12 A You make assumptions when you're doing an  
13 FMV appraisal, whether there are -- if you know  
14 the title issue you make a note of it in the  
15 appraisal. And if you don't know then you make  
16 an assumption of "clear title" or an assumption  
17 "not clear title," depending on what you put in  
18 your scope of work.

19 Q So other than the usual issues related to  
20 performing an FMV, or retail appraisal for that  
21 matter, are there any special considerations  
22 that go into valuing a museum collection?

23 A Not that I can think of right now.

24 Q You previously said that you're bound by  
25 USPAP, correct?

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1 might do to him or her or a firm?

2 A Good question. Because it involves a  
3 rather complicated answer.

4 In real estate appraisals, yes. Not the  
5 Appraisal Foundation itself, but the state  
6 governing authorities can censure an appraiser  
7 who doesn't follow USPAP, in real estate  
8 appraisals.

9 But in personal property appraisals, as I  
10 mentioned before, there's no state or federal  
11 regulation that compels a personal property  
12 appraiser to follow USPAP. We do it  
13 voluntarily. "We" meaning Winston Art Group,  
14 and those people who are members of the  
15 Appraisers Association and those who are  
16 members of the Appraisal Foundation.

17 Q So it's voluntary?

18 A It's a voluntary -- for personal property  
19 it's voluntary.

20 Q Can USPAP or its governing body sanction  
21 somebody who follows, purports to follow USPAP,  
22 but they don't follow USPAP?

23 A No, not for personal property appraisers.

24 Q You said you were with a firm called  
25 Gurr --

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1 A That's correct. For appraisals, yes.

2 Q And you're only offered here today as an  
3 appraisal expert, correct?

4 A That's correct.

5 Q What's the effect if you fail to follow  
6 USPAP?

7 A If one's doing an appraisal for the IRS,  
8 they can send the appraisal back, if it's not  
9 USPAP compliant. Insurance appraisal,  
10 insurance companies don't generally follow  
11 USPAP.

12 As I said before, it's an unfortunately  
13 rather unregulated industry. So there's no --  
14 there's no -- what's the word?

15 There's nothing that happens on a national  
16 or a state level if one doesn't conform to  
17 USPAP.

18 Q If you don't conform to USPAP does --  
19 sorry.

20 Is there a governing body of USPAP?

21 A USPAP is created by the Appraisal  
22 Foundation in Washington D.C.

23 Q And if an appraiser doesn't perform  
24 appraisals according to USPAP, is there a  
25 consequence in terms of what the governing body

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1 A Johns.

2 Q Gurr Johns?

3 A Yes.

4 Q And before that you were with Christie's?

5 A Before that I was with Habsburg.

6 Q Habsburg.

7 And before that were you with Christie's?

8 A Yes, I was.

9 Q When you were with Gurr Johns, did you  
10 follow -- were you bound by USPAP?

11 A We as a firm followed USPAP, yes.

12 Q And with Habsburg, were you bound by  
13 USPAP?

14 A No. USPAP came into existence in around  
15 1989, I believe. So prior to that, nobody was  
16 using USPAP.

17 Q So when you were at Christie's was USPAP  
18 in effect when you were at Christie's?

19 A No.

20 Q Have you followed USPAP ever since it came  
21 into existence?

22 A I think we started following USPAP  
23 probably when I was at Gurr Johns. I started  
24 there in 1992. So from then on.

25 Q Can a client come up with his own

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1 appraisal or her own appraisal of a piece of  
 2 art?  
 3 A A client can try to.  
 4 Q In your opinion it's better to use a  
 5 professional appraiser?  
 6 A That's what they hire us for.  
 7 Q And is it better to do so because you have  
 8 more experience?  
 9 A Correct.  
 10 Q It's better to do so because, at least  
 11 some of you would hold yourself out as being  
 12 objective?  
 13 A That's correct.  
 14 Q But it's possible for a client to come up  
 15 with his own estimate of value, correct?  
 16 A A client in a formal manner?  
 17 Or, I'm not sure I understood the  
 18 question.  
 19 Q Is it possible for a client to say that he  
 20 thinks the work carries a certain value?  
 21 A Yes.  
 22 Q And there's nothing wrong with that,  
 23 correct?  
 24 A No.  
 25 Q I'm sorry.

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1 MR. O'REILLY: Okay. Let's go off the  
 2 record.  
 3 THE VIDEOGRAPHER: The time is 10:22 a.m.  
 4 We're going off the record.  
 5 (Recess taken.)  
 6 THE VIDEOGRAPHER: This is the  
 7 continuation of Tape No. 1. The time is  
 8 10:29 a.m. We're back on the record.  
 9 BY MR. O'REILLY:  
 10 Q You've been in the art industry for 30  
 11 years?  
 12 A That's correct.  
 13 Q Have you ever seen a situation similar to  
 14 this one involving the DIA?  
 15 A In what sense?  
 16 Q Sure.  
 17 Where an art collection of this size is  
 18 part of a bankruptcy and that you are there to  
 19 value it.  
 20 A No.  
 21 Q Have you heard of anybody else who's  
 22 handled anything similar to this?  
 23 A Only the other parties in this situation.  
 24 Q Would it be fair to say that this is  
 25 professionally unprecedented?

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1 You said before, I believe, that you and  
 2 Winston do not perform insurance valuations; is  
 3 that right?  
 4 A No, I didn't say that.  
 5 Q Okay. So do you perform insurance  
 6 valuations?  
 7 A Yes, that's retail replacement value.  
 8 Q Oh. Sorry. Correct.  
 9 And we talked about that being typically  
 10 one of higher values that you get when you  
 11 value a work, correct?  
 12 A That's correct.  
 13 Q And that's because it presumes that you're  
 14 going out to the market and trying to acquire  
 15 the same thing within a compressed period of  
 16 time, correct?  
 17 A Yes, to market namely retail and gallery  
 18 market.  
 19 Q And just so we're on the same page, when  
 20 we're talking about retail replacements, and  
 21 you gave me 90 percent were on behalf of  
 22 private clients.  
 23 We were also talking about insurance  
 24 values at that time?  
 25 A That's correct.

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1 A For me?  
 2 Q Correct.  
 3 A Yes, I've never done something this size  
 4 before for a museum.  
 5 Q And have you heard of anybody who has done  
 6 anything like this professionally?  
 7 A Outside of the ones that are involved in  
 8 this case, no.  
 9 Q Do you know whether museums do appraisals  
 10 or valuations internally?  
 11 A They normally do not.  
 12 Q So if they wanted to understand the value  
 13 of the work, what would they do?  
 14 A They would normally go out to a certified  
 15 appraiser and have the work done.  
 16 Q And is that to understand FMV?  
 17 A Depending on their needs. Either FMV,  
 18 retail replacement value or marketable cash  
 19 value.  
 20 Q Do you personally know whether they do  
 21 that at the Detroit Institute of Arts?  
 22 A I do not.  
 23 (Deposition Exhibit 1, Binder, marked for  
 24 identification as of this date.)  
 25

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1 BY MR. O'REILLY:  
 2 Q I've handed you what's been marked  
 3 Exhibit 1 and leaving the binder aside, if  
 4 you'll just flip the binder over, does that  
 5 appear to be the expert report that you filed  
 6 in this case?  
 7 A Yes. From the first page it does look  
 8 like it, yes.  
 9 Q Okay. And it is your report, correct?  
 10 A That's correct.  
 11 Q Does it include all of your opinions?  
 12 A I'd have to look through each page to see.  
 13 But I'm assuming it's all here, yes.  
 14 Q You haven't been asked to give any other  
 15 opinions other than what's been set forth in  
 16 that report?  
 17 A In this situation, no.  
 18 Q Does it contain all the facts that you  
 19 relied upon?  
 20 A If it's complete, yes, it does.  
 21 Q If it's complete, does it contain all of  
 22 the assumptions that you've made in performing  
 23 your work?  
 24 A Yes.  
 25 Q All of the conditions as well?

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1 Q Anybody else?  
 2 A No, not until we sent it to the attorneys.  
 3 Q Okay. And did you send a final to the  
 4 attorneys, or did you send a draft to the  
 5 attorneys?  
 6 A We sent a draft about a week ago and the  
 7 final the following day. We did -- we signed  
 8 the report the following day.  
 9 Q The following day?  
 10 A Or two days later. I can't remember.  
 11 Q Now, you told me before you don't recall  
 12 when you were engaged, correct?  
 13 A I don't. I'd have to look at my record.  
 14 Q What was given to you to perform -- what  
 15 was given to you as part of your engagement?  
 16 A An engagement agreement letter, and the  
 17 information on the works, the list of works  
 18 that the law firm asked us to appraise.  
 19 Q And there were two lists?  
 20 A There were two lists, yes.  
 21 Q Were you given anything else?  
 22 A Not that I recall.  
 23 Q Were you given any factual information  
 24 orally?  
 25 A Just a request to do a fair market value

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1 A It should.  
 2 Q Did you physically write the report  
 3 that I'm -- were you the author of this report?  
 4 A I was the author of the first section of  
 5 the report, which is the expert report here.  
 6 And my company and the various experts involved  
 7 wrote or typed the remainder of it.  
 8 Q How many drafts did it go through?  
 9 A Well, I can explain how the process works.  
 10 Each individual appraiser submits their  
 11 section. The report is put together. So I  
 12 don't know if you call each of those sections a  
 13 draft. But it's put together and then it's  
 14 reviewed a few times for consistency and to  
 15 make sure everything has a value that needs to  
 16 have a value, to make sure it's in the correct  
 17 order and so on.  
 18 So in terms of number of drafts it's hard  
 19 to say, because it's put together in sections.  
 20 Q Other than you and other than the  
 21 appraisers involved, did anybody have any input  
 22 into the report?  
 23 A There were other people besides the  
 24 appraisers and myself in my office that did  
 25 review the report, yes.

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1 appraisal.  
 2 Q So it was your client Kirkland that asked  
 3 you to perform a fair market value appraisal?  
 4 A That's correct.  
 5 Q Did you have any input on whether or not  
 6 it should be an FMV or some other type of  
 7 appraisal?  
 8 A No, I did not.  
 9 Q Did you question whether it should be an  
 10 FMV or some other type of appraisal?  
 11 A No, I did not.  
 12 Q Other than the engagement letter, the two  
 13 lists, and the request to perform an FMV, were  
 14 you given anything else?  
 15 A Not that I recall.  
 16 Q Would the two lists that we speak of be in  
 17 your appraisal file?  
 18 A Yes, they would be.  
 19 Q Okay. Sitting here today, can you tell me  
 20 what's included in those two lists?  
 21 And by that I don't mean each individual  
 22 work.  
 23 But can you tell me what they purported to  
 24 be?  
 25 A Approximately -- I'm trying to think. I

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1 think it's approximately 590 Works of Art from  
 2 the Detroit Institute of Arts.  
 3 **Q Do you recall -- do you know why there**  
 4 **were two lists and not one list?**  
 5 A I don't know that.  
 6 **Q Do you know whether those lists came, in**  
 7 **fact, from the Detroit Institute of Arts?**  
 8 A I don't know.  
 9 **Q You relied upon counsel and their**  
 10 **representation about them being Works of Art of**  
 11 **the DIA?**  
 12 A Originally we did. But each -- most of  
 13 the items in there had a -- we had a link to  
 14 most of the items on the DIA website.  
 15 **Q Are those links things that you found**  
 16 **independently?**  
 17 A That, I can't recall.  
 18 **Q So I'm just trying to bucket some things**  
 19 **here. So you received two lists.**  
 20 **One list had lists of objects with names,**  
 21 **correct?**  
 22 A Yes, with artists.  
 23 **Q What other information on them?**  
 24 A With artist name, I believe there was a  
 25 brief description, and I believe there was a

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1 A They did not have images, no.  
 2 **Q When did you receive those two**  
 3 **spreadsheets?**  
 4 A I believe it was earlier this year. I  
 5 don't have the date in front of me.  
 6 **Q Was it within the last month?**  
 7 A No, it was prior to that.  
 8 **Q Would it have been around March?**  
 9 A I believe so, yes.  
 10 **Q Did you receive any lists or data after**  
 11 **that?**  
 12 A We received two lists. So the first one  
 13 would have been at or before that date, and the  
 14 second one would have been after that date.  
 15 **Q How much after, approximately, March 25th?**  
 16 A Maybe three, four weeks, I'm guessing.  
 17 That's really a guess. I need to look at my  
 18 notes to tell you exactly.  
 19 **Q Do you know why those works were selected**  
 20 **for your review?**  
 21 A I do not.  
 22 **Q Did one seem to contain works that were of**  
 23 **higher value than the other?**  
 24 A From my recollection, no. There were  
 25 higher value works in both lists, perhaps

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1 DIA number, inventory number. But I don't have  
 2 those lists in front of me, so I'm not exactly  
 3 sure.  
 4 **Q Did the second list contain the same**  
 5 **information for a different set of works?**  
 6 A I believe it did; although, I think there  
 7 were a couple of duplicates.  
 8 **Q You said there were a couple of duplicate**  
 9 **across the two lists.**  
 10 **But other than those two duplicates, they**  
 11 **were two separate groupings of objects,**  
 12 **correct?**  
 13 A That's correct.  
 14 **Q Do you recall the size or the number of**  
 15 **works on each list?**  
 16 A The first list was larger than the second,  
 17 but I don't recall the exact number.  
 18 **Q What was the format of the two lists?**  
 19 **It would be helpful if I had them here,**  
 20 **but I don't.**  
 21 **So what was the format?**  
 22 **What did they look like?**  
 23 A They looked like spreadsheets, basically.  
 24 **Q They looked like spreadsheets.**  
 25 **They didn't have images on them?**

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1 because the first one was larger, there was an  
 2 overall larger total in the first one, but I  
 3 can't be specific.  
 4 **Q Did you, independently, choose to review**  
 5 **works that were not identified for you?**  
 6 A No.  
 7 **Q So Exhibit 1, which is your report,**  
 8 **contains your expert report first, correct?**  
 9 A That's correct.  
 10 **Q And then behind it, sort of that page**  
 11 **behind the first tab is a -- I'm sorry.**  
 12 A Yes.  
 13 **Q So if you go to the prior page, that's**  
 14 **Page 1. And then you go to Page 2.**  
 15 A Correct.  
 16 **Q And then there are, after that, various**  
 17 **images.**  
 18 **Do you see that?**  
 19 A Yes.  
 20 **Q Okay. And it goes all the way to**  
 21 **Page 473.**  
 22 **Do you see that?**  
 23 A Yes.  
 24 **Q Okay. Are these all of the works that you**  
 25 **valued?**

1 A Yes.

2 Q Okay. Where did the images come from?

3 A These images were taken primarily from the  
4 DIA website. But there were some that didn't  
5 have images on the website and we did some  
6 research in some reference books or online to  
7 find other images.

8 Q So this is a work of your own creation,  
9 then?

10 A The appraisal is a work of our own  
11 creation, yes.

12 Q So the choice of what data and information  
13 to included here is of your own creation?

14 A No. The information came from the DIA.  
15 We left out some of the information because it  
16 was too lengthy, including the exhibition and  
17 so on, but put in the link to the DIA website  
18 for that information.

19 Q I guess what I was driving at is that it's  
20 formatted, and the data was things that you  
21 pulled and you included in this 400 plus page  
22 document?

23 A That's correct.

24 Q Okay. Why did you organize the artwork in  
25 the fashion that you did, or can you explain?

1 Is there a reason why it starts with a  
2 client reference F8157 and then -- can you tell  
3 me why it's set up this way?

4 Is it organized by department?

5 A It's organized alphabetically by fine art  
6 and then by other sections, according to the  
7 information we were provided.

8 Q Were you asked to put it in that format?

9 A I believe we consulted with the law firm  
10 and said would this be an appropriate way to  
11 list them, by combining the two lists and then  
12 doing the fine art first and the other sections  
13 afterwards.

14 Q So it was your choice to do it that way?

15 A We consulted with the attorneys and made  
16 sure this is how they wanted it to be done.

17 Q Sitting here today, do you know whether  
18 the City of Detroit owns all of these works?

19 A I don't.

20 Q Sitting here today, do you know whether  
21 any restrictions or encumbrances were clouds of  
22 title on any of these works?

23 A No, I do not. We assumed it was clear  
24 title.

25 Q What assumptions were you asked -- sorry.

1 What assumptions did you include as part  
2 of your appraisal?

3 A I'm going to refer back to the scope of  
4 work on Pages 5 and 6 of the appraisal, under  
5 the heading, "Assignment Considerations," and  
6 the other heading, "Extraordinary Assumptions:  
7 Hypothetical and Limiting Conditions."

8 That lists the assumptions that we made in  
9 this appraisal.

10 Q So this is full and complete, then?

11 A It should be, yes.

12 Q Okay. Were all of those assumptions given  
13 to you by your counsel?

14 A No. We made those assumptions.

15 Q Okay. Did counsel instruct you to take  
16 any assumptions into account?

17 A Not that I recall.

18 Q When you began your work, did you have any  
19 sense of what the valuation would turn out to  
20 be?

21 A No. None whatsoever.

22 Q Did you have any sense of what counsel  
23 thought it would be?

24 A No. None whatsoever.

25 Q Prior to beginning your work, had you seen

1 the Christie's valuation of some of the works  
2 at the DIA?

3 A No. I read some information that they had  
4 done the appraisal on in articles. But I had  
5 not seen the appraisal.

6 Q Did you know what the number was, in sort  
7 of a general way?

8 A No, I do not.

9 Q So you don't know whether it was a billion  
10 or 500 million?

11 A No, I don't.

12 Q Sitting here today, do you know?

13 A No, I do not.

14 Q Did you form any opinion on whether you  
15 thought it was high or low?

16 A No, I did not.

17 Q Did you form any opinion on whether or not  
18 it was complete?

19 A No, I did not.

20 Q So on Page 6 of your report it says --  
21 under "Method of Examination, The appraisers  
22 were unable to examine works in person, so they  
23 appraised solely from images and descriptions."  
24 Do you see that?

25 A I do.

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1 Q Why were you unable to examine works in  
 2 person?  
 3 A Given the timing of the appraisal, the  
 4 short time in which we had to do the appraisal,  
 5 we didn't have time to go out to the museum and  
 6 take a look at them; although two of our --  
 7 excuse me. Two of our specialists did take a  
 8 visit out to look at some of the works.  
 9 Q Two of your specialists, though?  
 10 A Yes, correct.  
 11 Q When did they do that?  
 12 A Sometime, I believe, in March or April.  
 13 Q Do you know how many works they viewed?  
 14 A I do not know exactly how many.  
 15 Q They viewed works in the public galleries?  
 16 A Yes.  
 17 Q Okay. Did they attempt to view -- let's  
 18 back that up.  
 19 How many days were they there?  
 20 A One day each.  
 21 Q So two full days?  
 22 A Correct.  
 23 Q Were they attempting to look at any  
 24 particular works?  
 25 A Yes.

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1 with reviewing the information they had in  
 2 coming up with their appraisal?  
 3 A Yes, given the assumptions we made.  
 4 Q Did the old master specialists believe  
 5 that they couldn't make the assumptions that  
 6 the others were comfortable with?  
 7 A They thought they could, but they would be  
 8 more comfortable giving accurate numbers after  
 9 seeing the works.  
 10 Q Sitting here today, do you know which  
 11 works in particular they went to see?  
 12 A I know roughly which ones, yes.  
 13 Q Is it a long list?  
 14 A It's roughly all of the Old Master  
 15 Paintings and the Works of Art that fall into  
 16 that age range.  
 17 Q How many is that?  
 18 A I'd have to look. I can look and tell  
 19 you.  
 20 Q But it's in the category that says "Old  
 21 Masters," in here?  
 22 A I don't think it's broken out into Old  
 23 Masters.  
 24 But Old Masters are generally Works of Art  
 25 that are approximately 1800 and before,

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1 Q Which ones?  
 2 A They were looking particularly at the Old  
 3 Master Paintings and the Works of Art.  
 4 Q I'm sorry. You said Old Master Paintings  
 5 and the?  
 6 A Works of Art, meaning the Old Master Works  
 7 of Art objects.  
 8 Q So only in the Old Master category?  
 9 A Primarily, that's what they were looking  
 10 at.  
 11 Q Why did they go only to look at the Old  
 12 Masters?  
 13 A They were the two old master and works of  
 14 art specialists.  
 15 And because that area of the market is the  
 16 most difficult to do from images. They felt  
 17 they needed to see some of the works in person  
 18 to judge quality.  
 19 Q So that's something they felt they needed  
 20 to do to finish their work?  
 21 A Yes.  
 22 Q Did anybody else have a similar concern?  
 23 A No. And that's why we put some of our  
 24 assumptions into our document.  
 25 Q Your other appraisers were comfortable

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1 paintings.  
 2 Q Did they enjoy the museum?  
 3 A They did.  
 4 Q You've been to the museum, correct?  
 5 A I've never been to the museum.  
 6 Q Your husband has?  
 7 A Yes.  
 8 Q We talked about -- have we covered  
 9 everything that was given to you to perform  
 10 your appraisal?  
 11 A Yes.  
 12 Q You also looked at workbooks, correct?  
 13 A That's correct.  
 14 Q And those are listed in your report,  
 15 correct?  
 16 A They are.  
 17 Q We've talked about visits by two of your  
 18 specialists, correct?  
 19 A Yes.  
 20 Q There were no other visits, correct?  
 21 A That's correct.  
 22 Q We talked about research online with the  
 23 DIA website, correct?  
 24 A Yes.  
 25 Q Is there anything else that you or your

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1 appraisers did or relied upon to come up with  
 2 this valuation?  
 3 A Other than research online, consulting  
 4 with each other, that's what we did to do the  
 5 appraisal.  
 6 Q And you looked at comparables and the  
 7 things that you typically do, correct?  
 8 A That's correct.  
 9 Q Were you ever told that you couldn't  
 10 receive access to Works of Art at the museum?  
 11 A No.  
 12 Q Did you ever ask to have access to Works  
 13 of Art at the museum?  
 14 A Initially we did, yes.  
 15 Q What was the response?  
 16 A That timing was very short and we needed  
 17 to get this done very quickly. And we didn't  
 18 have time to go out there and spend a few days  
 19 out there.  
 20 Q So no one told you that the DIA said you  
 21 couldn't come and see Works of Art, correct?  
 22 A No. That's correct, yes.  
 23 Q Did you ask for any other access to  
 24 documents, or did you ask for any other access  
 25 to perform your work?

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1 which we couldn't appraise from the information  
 2 provided.  
 3 Q Sitting here today, do you recall how many  
 4 those were?  
 5 A Approximately ten of the items. And they  
 6 are listed in the appraisal.  
 7 Q And did you not perform a valuation for  
 8 that?  
 9 A Correct.  
 10 Q So you received a total of?  
 11 A I believe it was around 592. Something in  
 12 that range.  
 13 Q The list was 594 works, correct?  
 14 A Correct, yes.  
 15 Q And you're appraisal covered 582 works,  
 16 correct?  
 17 A That's correct.  
 18 Q So the discrepancy there is that you did  
 19 not feel you had enough information because  
 20 there wasn't an image -- you didn't have enough  
 21 information to perform a valuation, correct?  
 22 A On some of those, correct.  
 23 Q Was it because there was no image?  
 24 A No. We had images -- we found images, I  
 25 believe, on everything.

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1 A No.  
 2 Q Did you ask for any documents to perform  
 3 your work?  
 4 A When we couldn't find something on the DIA  
 5 website we brought it to the attention of the  
 6 attorneys, and we did as much research as we  
 7 could outside of the DIA website and  
 8 information to enable us to do the appraisal on  
 9 those Works of Art.  
 10 Q What did the attorney say to you as to  
 11 whether you could or could not receive that  
 12 work, those objects, or those documents that  
 13 you wanted?  
 14 A We didn't ask them for documents because  
 15 they didn't have the documents. But we did  
 16 note to them, we did bring to their attention  
 17 there were some items on the list for which we  
 18 didn't have images and descriptions from the  
 19 DIA website.  
 20 Q Did they tell you that the DIA refused to  
 21 give you access to that information?  
 22 A No. They didn't say that, no.  
 23 Q Were you satisfied that you had everything  
 24 you needed to perform an FMV appraisal?  
 25 A Yes, with the exception of certain items

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1 Q Why couldn't you perform a valuation on  
 2 them?  
 3 A Well, various reasons.  
 4 The Deigo Rivera mural, we felt it was  
 5 integral with the building, and we could not  
 6 separate it from the building in order to  
 7 appraise it.  
 8 There are a group of Islamic Works of Art  
 9 in which our specialist said they could not do  
 10 without actually being on-site, and there was  
 11 not time enough for the expert to go on-site.  
 12 So they're listed but not appraised, and  
 13 there's a note under each of those.  
 14 I believe there are some other ones. I'd  
 15 have to look through and see what they were and  
 16 why we couldn't appraise those.  
 17 There was another group of work by  
 18 Ellsworth Kelly, which we didn't feel we had  
 19 enough information to give an appropriate  
 20 value. And there may have been a few more, but  
 21 I'd have to look through and see them.  
 22 Q The total range was the spread between 594  
 23 and --  
 24 A 592; 12 items, yes.  
 25 Q Do you know whether valuations of those

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1 works would materially change your FMV?  
 2 A I don't know that. We haven't appraised  
 3 those.  
 4 Q But you're not rendering an opinion on  
 5 what those values would be, correct?  
 6 A We are not.  
 7 Q You had from the time of your engagement,  
 8 at least, until a week ago, to perform your  
 9 work.  
 10 Is it your position that that amount of  
 11 time was not sufficient to go to the museum to  
 12 obtain the information you needed?  
 13 A Yes.  
 14 Q Your FMV appraisal, is that 580 -- 582  
 15 works have a value of 1,742,245,750, correct?  
 16 A For fair market value, yes.  
 17 Q And you finished your appraisal last week  
 18 or thereabouts, correct?  
 19 A Correct.  
 20 Q And the March 25 date is a date that you  
 21 were given by counsel to assume is the  
 22 effective date, correct?  
 23 A That's correct.  
 24 Q I still don't understand the relevance of  
 25 that date.

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1 A When we received the list we looked at it  
 2 carefully and separated it into areas of  
 3 expertise. Then the appraisal was downloaded,  
 4 which was downloaded into our system using  
 5 information from the DIA website in comparing  
 6 items on the list to items on the DIA website.  
 7 If there were items that we couldn't find  
 8 on the DIA website we looked in reference  
 9 books, gathered information online. Then the  
 10 appraisal was separated into categories and  
 11 sent off to the appropriate specialist or  
 12 specialists.  
 13 They then did their research, came back  
 14 with their fair market values; those were  
 15 uploaded into the system. By "system," I mean  
 16 this system that you see here.  
 17 And then the work was reviewed and  
 18 discussed. The values were looked at. The  
 19 scope of work was prepared in detail. The  
 20 expert report was created. The whole document  
 21 was put together and sent out to the attorneys.  
 22 Q So each individual appraiser came up with  
 23 an FMV on an object-by-object basis?  
 24 A That's correct.  
 25 Q Then it was reviewed by you?

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1 But all appraisals that you do have an  
 2 effective date?  
 3 A That's correct.  
 4 Q Is it usual for there to be an effective  
 5 date that is prior to the time that you  
 6 complete your valuation?  
 7 A Almost always.  
 8 Q Why is that?  
 9 A For estate purposes, the effective date is  
 10 the date of death. That can be years before up  
 11 to weeks before. There's always a date chosen,  
 12 that if it's a divorce, it may be the date of  
 13 separation and so on.  
 14 Q Sitting here today, though, you don't know  
 15 why that date was selected?  
 16 A That's correct.  
 17 Q And I'm sorry, it's March 25, 2014, right?  
 18 Yes. Okay.  
 19 A I believe so, yes.  
 20 Q Can you just describe to me in a thumbnail  
 21 sketch way -- how you got from the day that you  
 22 were engaged, to selecting your specialists to  
 23 form an appraisal, to coming up with a number?  
 24 A Sure.  
 25 Q Thank you.

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1 A By me and my colleagues.  
 2 Q And your colleagues.  
 3 Are all your colleagues mentioned in your  
 4 report --  
 5 A Yes.  
 6 Q -- all of them?  
 7 Anybody who was involved in the appraisal  
 8 was mentioned in your report, correct?  
 9 A Yes.  
 10 Q Were there any adjustments as a result of  
 11 that review and discussion process?  
 12 A There were some adjustments, yes.  
 13 Q Can you tell me what they are?  
 14 A Yeah.  
 15 As we went through the values if we -- we  
 16 compared them to the comparables, we might ask  
 17 the expert to talk about how they came up with  
 18 that value.  
 19 In the fine art area, which is the most  
 20 valuable area, a number of us worked on the  
 21 appraisal, and we sat down and talked about  
 22 relative values, so we might have adjusted  
 23 something up, something down, depending on our  
 24 discussions.  
 25 Q Can you give me a sense of the order of

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1 magnitude in which you adjusted up or down?  
 2 A Approximately 10 percent, maybe, for an  
 3 item up or down, depending on what we  
 4 discussed.  
 5 Q And then the aggregate of your entire  
 6 appraisal, do you know approximately how much  
 7 up or down it was?  
 8 A I don't. But I would say something in the  
 9 range of 10 percent.  
 10 Q For the whole collection?  
 11 A No, for those particular works.  
 12 Q Right.  
 13 Okay. So particular works, you might have  
 14 gone up 10 percent or gone down 10 percent.  
 15 I'm trying to understand whether it  
 16 materially changed your fair market value  
 17 appraisal for the full 582.  
 18 Can you tell me whether it went up  
 19 1 percent, 2 percent, or down 1 or 2 percent?  
 20 A I'd say it went down a couple of percent.  
 21 Q But not a material change?  
 22 A Not material change, no.  
 23 Q So after that discussion of changing on an  
 24 object-by-object basis, maybe an adjustment,  
 25 did you do anything else with those values?

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1 Q Sitting here today, do you have any?  
 2 A I don't, no.  
 3 Q Did your specialist have any?  
 4 A No.  
 5 Q Did you look at the Rembrandt works?  
 6 A I looked at the images of them in the  
 7 description, yes.  
 8 Q Did another specialist actually do that  
 9 work?  
 10 A Yes.  
 11 Q What was their impression of those objects  
 12 or those prints?  
 13 A From the values given in the appraisal,  
 14 they were a relatively modest value.  
 15 Q Do you recall any discussion of their  
 16 quality?  
 17 A Yes. He said that the quality overall was  
 18 not top quality.  
 19 Q Do you recall any discussion of the two  
 20 Matisse's, Poppies No. 1 and 2, I think, is  
 21 what they were referred to.  
 22 Do you recall any discussion of those  
 23 works?  
 24 A Internally we discussed those works, yes.  
 25 Q There's a big spread in value on those

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1 A In terms of?  
 2 Q Did you make an adjustment saying there's  
 3 a lot of works here, so if we actually tried to  
 4 sell them, the value would have to be lower?  
 5 A No we didn't -- we weren't examining sales  
 6 at all. We were merely doing appraisals.  
 7 Q So those individual values were added up,  
 8 and which resulted in the \$1.7, approximately,  
 9 billion dollar number, correct?  
 10 A That's correct.  
 11 Q Fairly straightforward then?  
 12 A Yes.  
 13 Q Did you have any impression, at all, as to  
 14 why you were looking at this selection of works  
 15 and not a different selection of works?  
 16 A No, we didn't.  
 17 Q Did you notice that there were 60  
 18 Rembrants, and did that stand out to you at  
 19 all?  
 20 A Rembrandt prints, yes. I did see that,  
 21 yes.  
 22 Q Did you have any view or opinion or  
 23 thought as to why it was there were 60  
 24 Rembrants included?  
 25 A No, not at all.

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1 works, correct?  
 2 A We value those as a single unit.  
 3 Q Was there any discussion as to why there  
 4 was a difference between those two values?  
 5 A Yeah. I guess we discussed why we came up  
 6 with a value of one versus the other.  
 7 Q It didn't stand out to you, though, that  
 8 one was in the millions and one was not?  
 9 A They were different objects.  
 10 Q Simply having a famous name doesn't mean  
 11 you have a high quality object, right?  
 12 A That's correct.  
 13 Q Doesn't mean that it's high value,  
 14 correct?  
 15 A That's correct.  
 16 Q Simply because you have 60,000 objects  
 17 doesn't mean that it's any good, correct?  
 18 A What?  
 19 Q Just because a museum has 60,000 objects  
 20 doesn't mean that all of them are high quality,  
 21 correct?  
 22 A That's correct.  
 23 Q Did you make any attempt to value works  
 24 other than those given to you by your lawyers?  
 25 A No, we did not.

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1 Q Did you ask to do any valuation of any  
 2 other works?  
 3 A No, we did not.  
 4 Q Based upon your understanding of the  
 5 electronic system and the process that you  
 6 followed, which were to look at some images  
 7 online, could you have valued works other than  
 8 those given to you?  
 9 A Yes, we could have.  
 10 Q And could you formulate an opinion on them  
 11 for fair market value?  
 12 A Yes, we could have.  
 13 Q Okay. So you did not do anything to value  
 14 the entire collection, correct?  
 15 A That's correct.  
 16 Q And you haven't been asked to do that,  
 17 sitting here today, right?  
 18 A Correct.  
 19 Q And you don't expect to be asked to do  
 20 that, correct?  
 21 A Not that I know of.  
 22 Q You've given me a definition of fair  
 23 market value, right?  
 24 A Yes.  
 25 Q What's a definition of marketable cash

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1 America.  
 2 Okay, I've read that.  
 3 Q Do you agree with those definitions?  
 4 A Well, it's not something I use.  
 5 So agree or not agree, if that's the  
 6 definition given by the Appraisers Association  
 7 of America, I'm assuming it's correct.  
 8 Q This report was prepared in compliance  
 9 with USPAP, correct?  
 10 A That's correct.  
 11 Q Does USPAP have its own definitions of  
 12 these terms?  
 13 A USPAP does. I don't know -- I'm assuming  
 14 it includes liquidation, but I'm not sure  
 15 because it's not something we use. It's not  
 16 something I paid attention to.  
 17 Q Why did he use the AAA definitions on this  
 18 page?  
 19 A Because I'm on the board of that  
 20 organization and all of us at my firm are  
 21 members in that organization.  
 22 Q Do you have any reason to dispute that  
 23 these are not fair descriptions of what those  
 24 terms mean?  
 25 A I have no reason to doubt that.

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1 value?  
 2 A Marketable cash value is fair market value  
 3 minus the cost of sales.  
 4 Q Anything else?  
 5 A No, that's the general definition.  
 6 Q You as a firm do marketable cash value  
 7 appraisals, correct?  
 8 A Yes.  
 9 Q What's the definition of a liquidation  
 10 value?  
 11 A I'm not clear on what a liquidation value  
 12 is.  
 13 Q Is it defined in USPAP?  
 14 A It may well be.  
 15 Q Can you turn to Page 484 in your report.  
 16 A Mm-hmm.  
 17 Q You see there it has a definition of FMV  
 18 and replacement value and liquidation value and  
 19 marketable cash value.  
 20 Those are all defined there, correct?  
 21 A That's correct.  
 22 Q And do you agree with those definitions?  
 23 A I would have to read it because  
 24 liquidation value is not something we use. But  
 25 these are from the Appraisers Association of

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1 Q Your FMV appraisal doesn't tell the Court  
 2 what net cash a City would receive if it  
 3 actually sold the works that you valued,  
 4 correct?  
 5 A Correct.  
 6 Q So you're not opining for the Court that  
 7 the City would receive approximately  
 8 \$1.7 billion in cash if it's sold, correct?  
 9 A Correct.  
 10 Q What appraiser would tell the Court what  
 11 it would be sold for?  
 12 A It would be an opinion of value, because  
 13 there's no way to predict what things would  
 14 sell for. But marketable cash value would  
 15 probably get close to that number.  
 16 Q Would liquidation value get close to that  
 17 number?  
 18 A As I said, it's not something we use in my  
 19 firm. So we think marketable cash value is  
 20 really what we consider to be net to the  
 21 seller.  
 22 Q You have no reason, sitting here today,  
 23 because you said you don't use it, to disagree  
 24 that liquidation value would be an appropriate  
 25 measure, correct?

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1 A Correct.

2 Although one would have to take into

3 account whether there is duress in a time

4 period. But it's outside of the scope of

5 opinion. So I didn't -- I don't have a good

6 opinion on that.

7 MR. O'REILLY: Let's take a break.

8 Let's go off the record.

9 THE VIDEOGRAPHER: This concludes Tape

10 No. 1. The time is 11:12 a.m. We're off the

11 record.

12 (Recess taken.)

13 THE VIDEOGRAPHER: This begins Tape No. 2.

14 The time is 11:19 a.m. We're back on the

15 record.

16 BY MR. O'REILLY:

17 Q You said that marketable cash value

18 requires a reduction to make it net to seller,

19 correct?

20 A That's correct.

21 Q What are those items that would have to be

22 considered to make it net to seller?

23 A The buyer's premium that the auction house

24 puts on the hammer price, would be taken off.

25 Any selling commissions on the part of the

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1 the higher level, those may be waived. So

2 there's nothing there.

3 Shipping fees, which may have been charged

4 at a lower value would probably not be charged

5 at a higher value.

6 So you're basically talking around, the

7 high level works, around 12, 13 percent that

8 would come off. At the lower value you are

9 talking somewhere in -- by "lower value," it

10 could be all the way down to \$500, \$200 or

11 \$100; you're talking about probably a buyer's

12 premium of up to 25 percent or so, that would

13 come off.

14 A seller's commission, that could be up to

15 25 percent, and other fees: Insurance, might

16 be one and a half percent; shipping charges;

17 illustration fees, those would all come off.

18 So you can't give a precise one. For

19 every value, it changes depending on value.

20 Q You aren't here to give an opinion on the

21 amount of reductions there would be to get to

22 net -- net to seller price or marketable cash

23 value, correct?

24 A That's correct.

25 Q But you said that for works that are high

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1 seller, insurance charges, shipping charges,

2 illustration fees, and any other costs that are

3 associated with selling a Work of Art.

4 Q In a typical fine art transaction, are you

5 able to give me a percentage of how much of a

6 reduction that would be to the seller from, I

7 guess, the sale price to what the seller

8 actually nets?

9 A It depends on the level of value. The

10 higher the value, the lower the percentage

11 reduction. The lower the value the higher the

12 percentage reduction.

13 So in the case of a work that is, say,

14 over \$2 million, the buyer's premium, if you're

15 going to a Sotheby's or a Christie's type

16 auction house or a Phillips, or any of the

17 major auction houses, the buyer's premium would

18 be approximately 12 percent. The seller's

19 commission, at that high level, may be zero,

20 but it could be up to, say, 5 percent,

21 approximately. I'm giving approximates.

22 There's an insurance charge, which at the

23 higher level would probably be waived. So that

24 would not come off. That would not be charged.

25 There would be illustration fees. But at

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1 value you can have, for example, a buyer's

2 premium -- I'm sorry.

3 Is it the buyer's premium or the seller's

4 commission that is 12 percent?

5 A Buyer's premium.

6 Q So the seller would have to consider

7 reducing its expectations, if you will, from

8 fair market value from at least that 12 percent

9 to understand what their net would be, correct?

10 A Yes, in a hypothetical manner.

11 Q You've never been involved with a sale of

12 \$1.7 billion of art, have you?

13 A No.

14 Q Do you have any reason to know what the --

15 whether there would be a buyer's premium or a

16 seller's charge -- strike that question.

17 I think you said that -- you were offering

18 me examples of buyer's premiums by Christie's;

19 is that right?

20 A Christie's or Sotheby's. These are

21 approximate.

22 Q Approximately 10 percent, or for the high

23 value.

24 It could be higher for low value, right?

25 A Yes. Approximately 12 percent, highest

1 level, at Christie's and Sotheby's, and I  
 2 believe Phillips as well. And higher for a  
 3 lower value, generally.  
 4 Q If you applied that 12 percent discount to  
 5 1.75 billion, what's the number?  
 6 A I would need my calculator to give you  
 7 that number.  
 8 Q Does 200 million sound about right?  
 9 A Give me a calculator and I'll tell you.  
 10 Q Okay. You have no reason to dispute that  
 11 that would be charged in a transaction for a  
 12 sale of 1.75 billion dollars of art, right?  
 13 A Well, there are probably exceptions.  
 14 Q You personally have no factual information  
 15 to dispute that, correct?  
 16 A There are exceptions for high level Works  
 17 of Art where the seller gets a rebate part of  
 18 the buyer's premium.  
 19 Q That's negotiated between the parties who  
 20 are selling and the auction house, correct?  
 21 A Correct.  
 22 Q So you wouldn't know one way or the other  
 23 whether it could be included or not, correct?  
 24 A That's correct.  
 25 Q It would have to be worked out between the

1 A Yes.  
 2 Q In your experience, would you have to  
 3 consider whether a blockage discount is  
 4 appropriate if you tried to sell 594 works at  
 5 the museum -- sorry, 582?  
 6 A Selling is different from appraisals.  
 7 So if you're appraising Works of Art, you  
 8 do decide whether blockage discount is  
 9 appropriate or not.  
 10 Q Right.  
 11 But you haven't formed an opinion on that,  
 12 correct, for the 582 that you appraised?  
 13 A We did not use blockage discount.  
 14 Q Okay. Would you apply blockage discount  
 15 to get the marketable cash value for 60,000  
 16 works in a collection?  
 17 A It depends on what was in the collection.  
 18 Q What about the DIA collection?  
 19 A I haven't looked at the whole collection.  
 20 But generally blockage discounts are used when  
 21 there are Works of Art by the same artist of  
 22 the same type in an artist's estate.  
 23 That's the primary use for blockage  
 24 discount.  
 25 Q In your experience, would it be

1 two, correct?  
 2 A Yes.  
 3 Q When you listed the factors that you would  
 4 have to consider to get to the marketable cash  
 5 value, you didn't mention blockage discount,  
 6 right?  
 7 A Right.  
 8 Q Under USPAP, are there circumstances where  
 9 you would have to consider blockage discount?  
 10 A Under USPAP and under the IRS regulations,  
 11 yes.  
 12 Q Are you here in this case to form any  
 13 opinion on whether or not a blockage discount  
 14 applies to a sale of art at the DIA?  
 15 A Sorry. Can you rephrase that question? I  
 16 lost track.  
 17 Q You're being offered as an expert. I'm  
 18 just trying to figure out if you are going to  
 19 provide an opinion as an expert on whether a  
 20 blockage discount should be applied to a sale  
 21 of art at the DIA.  
 22 A I'm not here to do that.  
 23 Q Under USPAP, would you be required to  
 24 disclose if you're applying a blockage discount  
 25 to your marketable cash value assessment?

1 appropriate to consider it if you were doing a  
 2 marketable cash value assessment for a  
 3 collection of 60,000?  
 4 A It would be appropriate to look into it.  
 5 Q Would a sale of 100 master works  
 6 potentially depress the market?  
 7 A Broad question.  
 8 But I can say that if they were 100  
 9 individually fantastic Works of Art, probably  
 10 not, depending on how long you had to sell them  
 11 and what that group consisted of.  
 12 Q If you tried to sell them all at once and  
 13 they were high quality, would it have the  
 14 potential to depress the market?  
 15 A If you had to sell them all in one day,  
 16 you would want to consider various options for  
 17 those works: Auction, private sale, regional  
 18 sales.  
 19 So it really depends on what those Works  
 20 of Art are before I can make that  
 21 determination.  
 22 Q Do you know Todd Levin at the Levin Art  
 23 Group?  
 24 A I don't.  
 25 Q So you said it depends.

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1 Am I correct that you don't have an  
 2 opinion, sitting here today, whether a sale of  
 3 100 high value works at the museum would  
 4 depress the market?  
 5 A I don't have an opinion on that.  
 6 Q You said that you don't do liquidation  
 7 value, right?  
 8 A Correct.  
 9 Q Do you have a sense of when a liquidation  
 10 value is appropriate?  
 11 A I don't. We don't use it.  
 12 Q Okay. Do you know what factors would have  
 13 to be considered in a liquidation value  
 14 appraisal?  
 15 A No.  
 16 Q So you have no opinion one way or the  
 17 other about what factors might have to be  
 18 considered to understand what the liquidation  
 19 value of a collection would be?  
 20 A Correct.  
 21 Q And you don't have the expertise to do it  
 22 either, correct?  
 23 A We were never asked to do it. If we were  
 24 asked to do it we might investigate it and see  
 25 if we have the expertise to do it.

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1 don't use comparables?  
 2 Yeah.  
 3 So -- so in your report, which you used a  
 4 comparable market value approach, you mentioned  
 5 that some of them didn't have comparables.  
 6 I may be misreading or misremembering.  
 7 MR. RUEGGER: Page 7.  
 8 MR. O'REILLY: Page 7, my colleague says.  
 9 A Page 7. Oh, this is the report you're  
 10 talking about?  
 11 BY MR. O'REILLY:  
 12 Q Yeah. Your expert report --  
 13 A My expert report.  
 14 Q -- which you signed --  
 15 A Yes.  
 16 Q -- on Page 7.  
 17 At the bottom of the top paragraph, says:  
 18 Due to rarity, there are some items for which  
 19 no comparables exist. In these cases our  
 20 specialists offered their reasoning as to  
 21 valuation. In the occasional case items were  
 22 not valued for reasons stated in the document."  
 23 So you'd agree with me, then, that you  
 24 performed a comparable market value approach,  
 25 but where you didn't have comparables, you

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1 Q But sitting here today you don't have  
 2 those expertise, correct?  
 3 A I don't know. I've never been asked to do  
 4 it.  
 5 Q Well, now I'm a little confused.  
 6 So you've never done it before. And  
 7 you've told me you can't opine about it. But  
 8 you're saying that if you were asked to do it  
 9 you might learn enough to do it?  
 10 A We'd investigate what factors are called  
 11 into a liquidation value appraisal, and then  
 12 see if we were able to do it.  
 13 Q Have you been asked to do such an  
 14 appraisal?  
 15 A No.  
 16 Q Sitting here today, do you expect to do  
 17 such an appraisal?  
 18 A Not that I know of.  
 19 Q And this is your final report, correct?  
 20 A That's correct.  
 21 Q You used a market comparison approach in  
 22 doing your FMV, correct?  
 23 A Comparable market data approach, yes.  
 24 Q Sorry.  
 25 Can you use such an approach when you

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1 relied upon your professional judgment?  
 2 A That's correct. There were no direct  
 3 comparables, yes.  
 4 Q What's the distinction there?  
 5 You said "direct comparables"?  
 6 A Normally, every Work of Art has something  
 7 by that artist or by that work master that can  
 8 be very closely compared. But sometimes  
 9 something is so much better than other works on  
 10 the market or so rare that you have to use  
 11 comparables that are outside those direct  
 12 comparables and go to your market knowledge of  
 13 other artists who have crafted or painted or  
 14 made works that are similar, or what you  
 15 presume to be the market for something that is  
 16 so outside the norm.  
 17 Q When you say "outside the norm" -- well,  
 18 first of all, do you know which objects didn't  
 19 have comparables?  
 20 A They all had some kind of comparable.  
 21 They may not have had an auction comparable or  
 22 a direct artist comparable. But they wouldn't  
 23 have -- there was reasoning behind what the  
 24 appraisers did to compare it to other objects  
 25 or other Works of Art --

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1 Q Sure.

2 A -- in order to come up with a value.

3 Q I just want to understand the sentence.

4 It says: "Due to rarity there are some

5 items for which no comparables exist."

6 And then it says, "In these cases our

7 specialists offered their reasoning as to

8 valuation."

9 It doesn't mention in your report that

10 they examined things that were not direct

11 comparables?

12 A It notes in those particular cases how

13 they came up with the values that they came up

14 with.

15 Q So do you know what objects are being

16 referred to here?

17 A I'd have to look through and see which

18 ones.

19 Q Sitting here today you don't know that?

20 A I believe that the Bernini pieces were

21 three of the pieces for which there were no

22 direct market comparables.

23 Q Okay. What other factors would make

24 comparables -- excuse me.

25 What does a comparable have to be in order

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1 not a fact?

2 A Correct.

3 Q So there could be disagreements?

4 Reasonable minds could disagree over

5 whether or not your fair market value is more

6 correct than another?

7 A Yes.

8 Q Are there circumstances where there's a

9 spread between a fair market value assessment

10 or a value of any kind where it calls into

11 question the reliability or the credibility?

12 A I'm not sure I understand your question.

13 Q Let's say that you and Winston came up

14 with a fair market value of an object that was

15 a million dollars, and somebody else came up

16 with one that was \$10 million.

17 Would that automatically lead you to

18 believe that the value provided by somebody

19 else was suspect or not credible?

20 A Well, I'd want to know how they came up

21 with that number.

22 Q So it depends on the facts.

23 Sure.

24 So if it was ten times different you'd

25 want to know why -- how they came up with a

Page 115

1 for it to be a comparable?

2 A Comparable has to be --

3 Q Bad question. But I think you understood

4 it.

5 A I do understand it.

6 Comparable has to be something that helps

7 you determine the value that you're being asked

8 to opine on.

9 So it could be -- as I say, it could be a

10 direct comparable, which means another work by

11 that same artist of the same quality. But it

12 could be a work by another artist, or it could

13 be your knowledge of market conditions.

14 So it's not -- one doesn't just go to art

15 net and look for comparables and come up with a

16 value. You have to know the market as a whole.

17 And so those particular pieces that are

18 difficult to appraise, you have to look at

19 other factors in addition to direct

20 comparables.

21 Q And that's up to the independent

22 professional judgment of the appraiser?

23 A Absolutely.

24 Q An appraisal or a value called a "fair

25 market value," it's an opinion, correct, it's

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1 number before -- let me back it up.

2 If there was a value that had that sort of

3 spread, would you question the value being

4 proposed by somebody else?

5 A I'd ask some questions.

6 Q And if asked to do so, you'd investigate,

7 correct?

8 A Absolutely.

9 Q Would you take it on faith that it was

10 correct?

11 A No.

12 Q So we talked about rarity as being one

13 area where you might not use what you call

14 "direct comparables."

15 What about in the -- what's called a

16 really "low value work area."

17 Are there situations there where you don't

18 use comparables?

19 A No, you're always using comparables. We

20 keep our fingers very much on the pulse of the

21 market. And low values -- there are hundreds

22 of thousands of low value works that are sold

23 every year. So we do keep our eye on those,

24 and we're always comparing what we're

25 appraising to something else.

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1 Q Do you go through the formal process of  
 2 finding a comparable for, say, a \$5 object, or  
 3 do you just already know the market?  
 4 A We know the market.  
 5 Q Okay. So, again, you're using your  
 6 professional judgment?  
 7 A Correct.  
 8 Q In your experience, is it acceptable to  
 9 rely on other appraisers to form your own  
 10 valuation?  
 11 A In what sense?  
 12 Q Sure.  
 13 In your professional experience, such as  
 14 this one, is it acceptable to rely upon the  
 15 work of someone else in a specialized area to  
 16 come up with a valuation of multiple objects?  
 17 A In their particular field of expertise,  
 18 yes, we do that. We have specialists in  
 19 various areas, and we rely on their expertise  
 20 in that particular area to come up with the  
 21 correct value.  
 22 Q And do you -- we talked about the fact  
 23 that you go through a process of examining  
 24 their work to become comfortable with it,  
 25 right?

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1 A In most circumstances, yes.  
 2 Q You said "most circumstances."  
 3 What does that qualification mean?  
 4 A I would say if they didn't have a  
 5 particular expertise in a particular area, or  
 6 if they used a person who didn't have expertise  
 7 to do something of a particular specialization,  
 8 I would want to take a look at that appraisal  
 9 and the methodology.  
 10 Or if they were more concerned about  
 11 selling something, so were -- pushed to put  
 12 higher values on something I want to sell. I  
 13 want to look at that as well.  
 14 So circumstances surrounding the  
 15 appraisal.  
 16 Q But none of those things automatically  
 17 disqualify a client from relying up such  
 18 appraisals, right?  
 19 A Sorry. Repeat that.  
 20 Q Those things that you mentioned don't  
 21 automatically disqualify or render the opinion  
 22 unreliable, right?  
 23 A Correct.  
 24 Q And you're not here to offer an opinion on  
 25 whether Christie's and the work they did in

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1 A Correct.  
 2 Q Okay. And once you're comfortable with  
 3 it, you're willing to accept them and build  
 4 that into your final valuation, correct?  
 5 A Absolutely.  
 6 Q So you're doing a bit of due diligence on  
 7 those numbers, correct?  
 8 A That's right.  
 9 Q Is Christie's a respected auction house?  
 10 A Yes, it is. In most quarters, yes.  
 11 Q And do they appraise works?  
 12 A They do.  
 13 Q And are they professional and respected at  
 14 doing appraisals?  
 15 A Their core business is sales. They don't  
 16 conform to USPAP, but they do do appraisals.  
 17 Q Other than the fact that they don't  
 18 conform to USPAP, they do perform appraisals,  
 19 right?  
 20 A Correct.  
 21 Q And a client who retained them to do that  
 22 work would be -- could be entitled a lot -- a  
 23 client who retained Christie's, would be  
 24 reasonable for them to rely upon the work that  
 25 they did, correct?

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1 this case was reliable or not, correct?  
 2 A Absolutely correct.  
 3 Q In your opinion, is it appropriate to mix  
 4 valuation methodologies to come up with a  
 5 different valuation?  
 6 A Can you explain what you mean by that?  
 7 Q Is it appropriate to mix a fair market  
 8 value approach with a marketable cash value  
 9 approach?  
 10 A I can't think of a situation in which one  
 11 would do that.  
 12 Q In your experience, would it be  
 13 appropriate to do so?  
 14 A No.  
 15 Q Does USPAP permit it?  
 16 A I don't believe they do.  
 17 Q In your experience, is it appropriate to  
 18 base your own valuation on appraisals that  
 19 you've concluded were too high or too low?  
 20 A It would not be appropriate.  
 21 Q What about under USPAP?  
 22 A Under USPAP, no, you have to remain  
 23 objective and do your own appraisal.  
 24 Q So if you determined that another  
 25 valuation is incorrect or causes concern, can

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1 you rely upon it yourself?

2 A One would never rely on someone else's

3 work. And we would always do one's own work in

4 an appraisal.

5 Q So I'm going to unpack that for a minute.

6 Before we talked about the fact that you

7 can independently rely upon an appraisal in

8 coming up with your own opinions, as you've

9 done here, right?

10 A I don't understand the question.

11 Q So you had multiple appraisers who are

12 working for you, with you.

13 They came up with their own independent

14 judgment of fair market value, correct?

15 A Correct.

16 Q And they then gave those appraisals to you

17 and you came up with a final gross fair market

18 value here, correct?

19 A Correct.

20 Q Okay. And that's acceptable, right?

21 A Yes.

22 Q And that's acceptable under USPAP,

23 correct?

24 A That's correct.

25 Q You just said, I think, that it's never

Page 124

1 right?

2 A If it's the primary market and there is no

3 significant or no secondary market.

4 Q And you also said when there's a primary,

5 I guess you mean there's the artist trying to

6 sell, there's no comparable associated with it,

7 you might use an insurance value in those

8 circumstances?

9 A Yeah.

10 By "insurance value," I'd rather say a

11 retail replacement value, because you're

12 looking at what those Works of Art would sell

13 for in a gallery or a dealer.

14 Q Any other circumstances?

15 A Not that I can think of.

16 Q So USPAP, would it be permitted to do --

17 to rely upon insurance values in any other

18 circumstances?

19 A Not that I can think of.

20 Q Have you ever heard of a reputable art

21 appraiser relying upon such insurance values

22 outside of the circumstances that you

23 mentioned?

24 A I never heard of one.

25 Q Now, you said that it might be appropriate

Page 123

1 acceptable to rely upon another appraisal.

2 A You were talking about an appraisal that

3 you thought was incorrect.

4 Q Oh, okay. Thank you.

5 In your experience, is it appropriate to

6 consider insurance values in coming up with an

7 FMV?

8 A That's an interesting question.

9 There are cases when there are no fair

10 market values, when the artist is going to be a

11 primary source artist, where you have to rely

12 on retail prices in order to come up with fair

13 market value. And that's acceptable under IRS

14 standards.

15 Q Are there any other circumstances?

16 A Where the retail market is the primary

17 market, the IRS also says that can be used as

18 fair market value.

19 Q And you keep saying "IRS."

20 Is this what USPAP requires?

21 A USPAP requires you to use the market in

22 which the items are most generally sold in

23 order to come up with fair market value.

24 Q So if it's a retail market you could do

25 this, you could rely upon an insurance value,

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1 in a limited circumstance that you talked about

2 where there's a retail market and no secondary

3 market, and where there's the primary artist.

4 If you had -- would you just accept those

5 insurance -- sorry. Replacement -- say it

6 again.

7 A Retail replacement values. Retail

8 replacement values.

9 Q Would you simply accept the retail

10 replacement values as being correct?

11 A You'd have to do your research into

12 finding those retail replacement values.

13 So if there are no secondary market

14 values, no auction values, then you'd go to the

15 primary source where that Work of Art is sold

16 and you'd find out what they sell for in that

17 venue.

18 Q Is retail replacement value equivalent to

19 insurance value?

20 A Generally, yes.

21 Q Okay. You said "generally." And I want to

22 know what that means. Because we're talking

23 about retail replacement value, as something

24 you go to market to figure out what the cost

25 is.

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1       **And, generally, insurance values mirror**  
2 **that, right?**  
3 A    That's right. And the exception would be  
4 what I just mentioned to you before when retail  
5 is used for fair market value.  
6 Q    **Okay. And so "insurance values," if I can**  
7 **use that term -- because they do exist, right?**  
8       They are values that are given to  
9 insurance companies, right?  
10 A    Correct.  
11 Q    **Okay. Insurance value is one step removed**  
12 **from retail replacement value, right?**  
13 A    That's correct.  
14 Q    **Okay. So USPAP actually doesn't permit**  
15 **you to use insurance values, it allows you to**  
16 **use retail replacement values?**  
17 A    I think that's correct, yes.  
18 Q    **Let's assume for the second that insurance**  
19 **values are the same -- well, can't do that,**  
20 **actually.**  
21       So under USPAP you can't do it?  
22 A    Thinking back, and to be honest, I'm not  
23 sure whether USPAP goes into that, into as much  
24 detail as you're saying.  
25       Certainly you wouldn't use insurance

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1 **appraiser or firm that has done so?**  
2 A    Are you asking whether they would rely on  
3 an insurance appraisal for a fair market value?  
4 Q    **A ten-year old insurance value to come up**  
5 **with a fair market value?**  
6 A    That would be unusual. I can't --  
7 Q    **Have you ever heard of it occurring?**  
8 A    I have not.  
9 Q    **Do you know of any reputable art appraiser**  
10 **who's done that?**  
11 A    Not knowing the circumstances you're  
12 speaking about, no. But I'd have to know what  
13 the circumstances are to see if there's some  
14 reason why that could possibly be used.  
15 Q    **Does USPAP permit it?**  
16 A    As I say, I'm not sure USPAP goes into  
17 speaking exactly about insurance appraisals.  
18 It talks about retail replacement -- it talks  
19 about market value. It doesn't drill down into  
20 retail replacement value, and I don't believe  
21 it discusses insurance value.  
22 Q    **Would you need to be comfortable with the**  
23 **data before you relied upon it?**  
24 A    Absolutely.  
25 Q    **If you thought there were errors in it,**

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1 values in a fair market value appraisal for the  
2 IRS.  
3 Q    **Okay. In your experience, there are**  
4 **circumstances where you can use retail**  
5 **replacement value to come up with a fair market**  
6 **value, right?**  
7 A    Correct.  
8 Q    **And it's limited to the circumstances you**  
9 **spoke about, correct?**  
10 A    Yes. I can't think of any other  
11 circumstances.  
12 Q    **If the insurance values were the same as**  
13 **the retail replacement value, then it's**  
14 **essentially the same thing, right?**  
15       If you know that the insurance value is  
16 the same as the retail replacement value,  
17 theoretically, you can rely on that insurance  
18 value?  
19 A    Theoretically.  
20 Q    **Okay. What if the insurance value was**  
21 **dated, say, ten years old.**  
22       **Could you rely upon it then?**  
23 A    I wouldn't rely upon something that was  
24 ten years out of date.  
25 Q    **Have you ever heard of a reputable art**

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1 **would it be reasonable to rely upon it?**  
2 A    No.  
3 Q    **Would your answers change if I'm talking**  
4 **about marketable cash value.**  
5 A    Are you asking --  
6 Q    **So we just talked right now about retail**  
7 **replacement value and insurance values, and**  
8 **we're talking specifically about fair market**  
9 **value appraisals.**  
10       Are your answers the same if you were  
11 applying the same insurance values or retail  
12 replacement values to marketable cash values?  
13 A    Marketable cash value, as I mentioned, was  
14 fair market value minus the cost of the sales.  
15 So I can't think of a situation where you'd use  
16 an insurance value for marketable cash value.  
17       Again, I'd need to know specifics before I  
18 could be certain.  
19 Q    **But because you need to discover a fair**  
20 **market value before you get to marketable cash**  
21 **value, you still need to come up with a fair**  
22 **market value first, correct?**  
23 A    Yes.  
24 Q    **Do you know of any publications that would**  
25 **support using insurance values to come up with**

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1 either a fair market value or a marketable cash  
 2 value?  
 3 A If you're speaking specifically insurance  
 4 rather than retail replacement, I can't think  
 5 of any publications.  
 6 Q Other than the two circumstances which you  
 7 mentioned as to retail replacement value, do  
 8 you know of any publication that would support  
 9 using those values to come up with a fair  
 10 market value or a marketable cash value?  
 11 A No, I can't think of any.  
 12 Q Christie's and Sotheby's usually sell at  
 13 the high end of the market?  
 14 A Define "high end" of the market.  
 15 Q I don't have a lot of artwork in my house.  
 16 But I presume that some auction houses  
 17 handle more high quality works that generally  
 18 bring in more at time of auction.  
 19 Am I correct that there's a difference  
 20 between auction houses; there's like a first  
 21 tier auction house and then there's a second  
 22 tier?  
 23 A Well, we say that the major auction houses  
 24 would be Christie's, Sotheby's and Phillips.  
 25 They generally like to sell at the high end,

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1 sometimes in their online lower value sales  
 2 they will; but not generally.  
 3 Q In your experience, is it appropriate to  
 4 average, take the average Christie's and  
 5 Sotheby's department sale rate, whatever that  
 6 is, come up with 50,000; is it appropriate to  
 7 take that average and use that to appraise a  
 8 collection?  
 9 A I don't really understand your question.  
 10 Q If you were asked to do a fair market  
 11 value or a marketable cash value assessment of  
 12 a collection, in your experience, would it be  
 13 appropriate to just go to Sotheby's and  
 14 Christie's and figure out what their average  
 15 department sale price is and apply it to the  
 16 works in your collection?  
 17 A It's a hypothetical question, sort of a  
 18 broad one.  
 19 But I'd say if you have -- if you're  
 20 looking at a department at a particular artist,  
 21 the type of medium, if you're specifying very  
 22 clearly what their average price is in a short  
 23 period of time, you'd have to make a lot of  
 24 assumptions and a lot of conditions before you  
 25 could use that information to apply it to other

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1 but they also sell Works of Arts that are as  
 2 low as \$500.  
 3 Christie's, in their interior sale and  
 4 Sotheby's online or Christie's online, and  
 5 Phillips, maybe some of their smaller value  
 6 items.  
 7 So generally one goes to those major  
 8 auction houses is going to be a higher Works of  
 9 Art. But they will also sell more modest value  
 10 Works of Art.  
 11 Q The average in the departments -- but I  
 12 understand they're set up by departments;  
 13 that's correct?  
 14 A That's correct.  
 15 Q So the average in the department, they may  
 16 sell a few at the low end, but the average  
 17 tends to be high, right?  
 18 A Well, there is a department called the  
 19 "Interiors Department" at Christie's, where  
 20 their average is probably in the low thousands.  
 21 But generally they're selling at a higher  
 22 level.  
 23 Q Does Christie's typically sell -- auction  
 24 off pieces that are \$100 or \$200?  
 25 A In the Interiors Department, yes, and

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1 Works of Art.  
 2 Q So would you have to know what's actually  
 3 in your collection?  
 4 A Absolutely.  
 5 Q Other than those circumstances, are there  
 6 any other circumstances where you think it  
 7 would be appropriate?  
 8 A To apply an average value?  
 9 Q Taken from Christie's and apply it to your  
 10 own collection to figure out fair market value  
 11 or marketable cash value?  
 12 A Hard to tell, because I don't know the  
 13 specifics. But it doesn't sound like something  
 14 that's a reasonable methodology.  
 15 Q Have you heard of any reputable art  
 16 appraiser or firm using that approach?  
 17 A No.  
 18 Q Are you aware of any publications that  
 19 would support the use of that approach?  
 20 A Not as defined, no.  
 21 MR. O'REILLY: Break for lunch?  
 22 MS. GARTEL: Okay.  
 23 MR. O'REILLY: Let's go off the record.  
 24 THE VIDEOGRAPHER: This concludes Tape No.  
 25 2. The time is 12:00 p.m., and we're off the

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1 record.  
 2 (Luncheon Recess: 12:00 p.m.)  
 3 AFTERNOON SESSION  
 4 (Time noted: 12:52 a.m.)  
 5 ELIZABETH VONHABSBURG,  
 6 resumed and testified as follows:  
 7 THE VIDEOGRAPHER: Good afternoon.  
 8 This begins Tape No. 3. The time is  
 9 12:52 p.m. We're back on the record.  
 10 EXAMINATION BY  
 11 MR. O'REILLY:  
 12 Q Hi. How's lunch?  
 13 A Very good, thank you.  
 14 Q Have you read or discussed the expert  
 15 report by Artvest with anyone?  
 16 A I flipped through it, but I can't say that  
 17 I looked at it very carefully.  
 18 Q Were you asked to look at it?  
 19 A No. Just -- it was sent to us and I  
 20 looked through it.  
 21 Q Okay. Did you not have any opportunity to  
 22 review it in any detail at all?  
 23 A Not in detail. I literally just, you  
 24 know, looked through to see how it was laid  
 25 out.

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1 Q And do you have an opinion about any of  
 2 those appraisers?  
 3 A Yes, I have a high opinion of  
 4 Betty Krulik.  
 5 Q Okay.  
 6 A There was one other woman whose name I've  
 7 forgotten right now. But a woman who has a  
 8 good reputation.  
 9 Q And do you -- did you think that any of  
 10 them had a bad reputation?  
 11 A I only saw two. I literally looked at it  
 12 very fast. And I saw two names that I  
 13 recognized immediately. And those would be  
 14 two -- I forget the second one's name.  
 15 Q Have you seen the expert report of  
 16 Victor Wiener or Weiner?  
 17 A No, I have not.  
 18 Q Have you discussed any of his opinions --  
 19 any of the opinions that he would offer in the  
 20 report or in testimony in this case?  
 21 A No, I have not.  
 22 Q Do you have an opinion about Mr. Wiener's  
 23 professional reputation?  
 24 A No, I do not.  
 25 Q Do you know him socially?

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1 Q Did you form any opinions or impressions  
 2 about it?  
 3 A No.  
 4 Q No.  
 5 And sitting here today, you're not here to  
 6 provide any opinion or testimony about that  
 7 report, correct?  
 8 A That's correct.  
 9 Q Okay. Do you know Michael Plummer?  
 10 A I do.  
 11 Q Do you know Artvest, generally?  
 12 A Yes, I do.  
 13 Q Do you have an opinion about either  
 14 Artvest or Michael Plummer from a professional  
 15 standpoint?  
 16 A I'm not -- I've -- I've never really been  
 17 exactly sure what they do at that firm, other  
 18 than do reports on -- on the art market.  
 19 Q Okay. So you don't substantively deal  
 20 with them sufficiently to have an opinion one  
 21 way or the other?  
 22 A That's correct.  
 23 Q Did you identify any of the appraisers  
 24 that they used?  
 25 A Yes, I did.

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1 A Not socially. I've seen him in business  
 2 situations.  
 3 Q So you have no impression of his skills as  
 4 an appraiser?  
 5 A No. He's never worked for me or with me.  
 6 He's worked on occasion on opposing appraisals.  
 7 Q So tell me about that. You said he's  
 8 worked on opposing appraisals.  
 9 Can you give me some example?  
 10 A Yeah.  
 11 Without giving you specifics, there was a  
 12 recent case where he did an appraisal for a  
 13 loss of value for a client, and we were working  
 14 for the insurance company preparing the same  
 15 kind of appraisal.  
 16 Q Was it an FMV?  
 17 Was it an replacement cost value?  
 18 A It was replace -- retail replacement  
 19 value.  
 20 Q So you both performed the same  
 21 valuation -- I'm sorry.  
 22 You used the same methodology; you both  
 23 did replacement?  
 24 A We both did retail appraisal value,  
 25 replacements, yes.

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1 Q How long ago was that?  
 2 A That was within the last three months or  
 3 so.  
 4 Q His -- and you examined his appraisal,  
 5 correct?  
 6 A I did, yeah.  
 7 Q Do you recall what -- I want to be careful  
 8 here because I don't want to put you in an  
 9 awkward position.  
 10 But was it for an individual work or was  
 11 it a collection of works?  
 12 A It was a group of works.  
 13 Q A group of works.  
 14 A small group or --  
 15 A Small.  
 16 Q Small group. Okay.  
 17 And did you follow the same methodology?  
 18 A I looked -- I didn't do a review of his  
 19 appraisal. But it -- it appeared that his  
 20 appraisal was USPAP compliant, as ours was.  
 21 Q And in that circumstance, did you look at  
 22 the market for replacement, or did you look at  
 23 some sort of insurance values?  
 24 A I'm trying to remember in that situation  
 25 whether we -- sometimes we're provided with a

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1 Excuse me.  
 2 A Yes, there's been a couple of other  
 3 situations.  
 4 One is an ongoing situation and also an  
 5 insurance loss of value situation, where we are  
 6 working on behalf of the artist. And he's  
 7 working on behalf of the insurance company.  
 8 Q And is that complete, that work?  
 9 A No, it's not. It's ongoing.  
 10 Q Any other instances in which you've dealt  
 11 with him professionally?  
 12 A I think several years ago, another  
 13 insurance situation where we were acting on  
 14 behalf of a client with a loss of value on a  
 15 work of art. And I believe he was acting on  
 16 behalf of the insurance company or a different  
 17 insurance company for the insurance company we  
 18 were working with.  
 19 Q And did -- was this a fine art valuation?  
 20 A Yes.  
 21 Q Okay. And did you, in that circumstance,  
 22 follow the same valuation methodology?  
 23 A Never saw his valuation in that one, but  
 24 we used the USPAP methodology.  
 25 Q Okay. Do you recall whether it was retail

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1 pre-loss value, and I don't recall in this  
 2 situation whether we were provided that  
 3 replacement value or whether we came up with it  
 4 on our own.  
 5 But it was retail replacement value for  
 6 insurance purposes.  
 7 Q Okay. Are you able to tell me how much  
 8 you valued the group for?  
 9 A No, I cannot.  
 10 Q Okay. Can you tell me what you valued the  
 11 group for?  
 12 A I cannot.  
 13 Q Okay. Can you tell me whether his was  
 14 higher or lower than yours?  
 15 A His was higher than ours.  
 16 Q What's the order of magnitude, that it was  
 17 higher?  
 18 A I'm guessing, trying to remember. Maybe  
 19 25 percent higher.  
 20 Q And did you have an opinion on whether  
 21 that was a correct valuation?  
 22 A Our opinion was on our own valuation. We  
 23 felt that our valuation was correct.  
 24 Q Any other instances in which you dealt  
 25 with him personally or professionally?

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1 replacement value?  
 2 A It was retail replacement value, yes.  
 3 Q You never saw whether his was, though?  
 4 A We did not, no.  
 5 Q Okay. But do you know whether your  
 6 numbers were different?  
 7 A I don't know in that situation.  
 8 Q Any other instances?  
 9 A Not that I can think of.  
 10 Q Have any of your clients ever used him?  
 11 A Not that I know of.  
 12 Q You ever heard of Art Capital Group?  
 13 A Yes.  
 14 Q Does Art Capital Group have a reputation  
 15 in the industry?  
 16 A Yes, they do.  
 17 Q What is that reputation?  
 18 A Some people think that they are not --  
 19 they don't have the highest reputation.  
 20 Q And what do you mean by that?  
 21 A Or honor -- honorability, perhaps, is the  
 22 word.  
 23 Q Under their reputation where they don't  
 24 have the highest honorability reputation, is  
 25 there any other reputation in the industry that

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1 they have?  
 2 A Not that I know of.  
 3 Q Have you ever dealt with them yourself?  
 4 A No.  
 5 Q Have any of your clients ever dealt with  
 6 them?  
 7 A No.  
 8 Q What about Ian Peck in particular?  
 9 Do you -- do you know Ian Peck?  
 10 A I don't know him personally, but I know  
 11 who he is.  
 12 Q Okay. And does he have a reputation in  
 13 the industry?  
 14 A I think the same, some people would say,  
 15 again, that he may not be as honorable as one  
 16 might want him to be.  
 17 Q Do you know why that's so?  
 18 A I think it's really the -- the focal point  
 19 of that was the -- I've forgotten the name now.  
 20 The case where the photographer when he was --  
 21 Q Leibovitz.  
 22 A Thank you.  
 23 Annie Leibovitz. Thank you very much.  
 24 Annie Leibovitz, when he was dealing with  
 25 her.

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1 given out in the industry?  
 2 A No, I'm not. I don't.  
 3 Q Have you ever heard of Poly International  
 4 Auction?  
 5 A Yes. Mm-hmm.  
 6 Q What are they?  
 7 A Chinese auction house.  
 8 Q Does Poly have a reputation in the market?  
 9 A That, I don't -- I'm not really familiar  
 10 with their reputation.  
 11 Q You've had 30 years of experience in this  
 12 market, correct?  
 13 A Yes.  
 14 Q And in that experience, you've never, I  
 15 guess, come across them; is that correct?  
 16 A I've never used them for any of our  
 17 clients.  
 18 Q Is there a reason for that?  
 19 A They just started not that long ago and  
 20 have holding auctions in China, maybe 10, 15  
 21 years ago.  
 22 I tend to recommend our clients use  
 23 international auction houses that have a  
 24 longstanding reputation and have -- where if  
 25 something goes wrong, we know how to reach the

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1 Q And what happened with Annie Leibovitz?  
 2 A He defaulted on her loan -- I mean, sorry.  
 3 She defaulted on her loan and he wanted to  
 4 see how he'd get repaid.  
 5 Q And why was that considered not honorable?  
 6 A I think that people were feeling very  
 7 sorry for Annie Leibovitz, who's a great  
 8 artist. And looking at it -- at it at an  
 9 emotional viewpoint.  
 10 From strictly a financial viewpoint, I  
 11 don't think people were looking at it with  
 12 those eyes. But feeling sorry for the  
 13 situation she was in.  
 14 Q Do you know did Ian Peck and Art Capital  
 15 or whatever entity that made the loan, did they  
 16 seize the property?  
 17 A I don't know how it turned out in the end.  
 18 But I know they were threatening to seize the  
 19 property.  
 20 Q Because she defaulted?  
 21 A Correct.  
 22 Q Do you have any other information about  
 23 Ian Peck or Art Capital Group?  
 24 A I don't.  
 25 Q Are you aware of what size loans they have

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1 principals so we can make it right.  
 2 Q So you don't, sitting here today,  
 3 recommend it to your clients because they don't  
 4 have a track record that is sufficient enough  
 5 for -- sufficient enough for you to recommend  
 6 them?  
 7 A It's not really a track record. It's more  
 8 of that they're located in China, and it makes  
 9 it very difficult for us to really have a close  
 10 relationship with them.  
 11 Q Do you know whether they have the same  
 12 auction standards or rules that a Christie's or  
 13 Sotheby's has?  
 14 A Christie's or Sotheby's?  
 15 They traditionally have not. None of the  
 16 traditional Chinese auction houses have really  
 17 been forthright in how many lots have been  
 18 unsold versus how many lots have been sold.  
 19 And in sale prices, there's been some  
 20 question whether their and other Chinese  
 21 auction houses sale prices were accurate.  
 22 Q Do you know whether they provide  
 23 guarantees for sales that don't work out the  
 24 way people want them to work out?  
 25 A That, I don't know.

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1 Q Okay. Anything else about Poly?  
 2 A Not that I can recall.  
 3 Q You know anything about Uon Management?  
 4 A No.  
 5 Q Have you ever heard of Catalyst  
 6 Acquisitions?  
 7 A No.  
 8 Q I've already asked you this question.  
 9 But you don't know who Houlihan Lokey, do  
 10 you?  
 11 A No.  
 12 Q Or Steve Spencer?  
 13 A No.  
 14 Q What auction houses do you send your  
 15 clients to?  
 16 A A very wide variety of auction houses,  
 17 including Christie's, Sotheby's, Phillips,  
 18 Bonhams.  
 19 Regional auction houses like Lichfield,  
 20 Lola, NAI, Rago, Curdo Lin [ph] out West;  
 21 Bonhams in California.  
 22 And some of the European auction houses,  
 23 branches, like the ones in Austria.  
 24 So a wide variety of auction houses.  
 25 Q And you would only send your clients to

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1 A It was one of the Monet paintings at the  
 2 MET.  
 3 Q What was it that moved you?  
 4 A Long time ago. It must have been the  
 5 colors and the scene.  
 6 Q Did it inspire you to move on with art as  
 7 a career?  
 8 A I think I wanted to be an artist at that  
 9 point. I was young.  
 10 Q Hadn't figured -- figured out whether  
 11 your -- your mind and your hand necessarily  
 12 matched up?  
 13 A Correct.  
 14 Q Do you have any children?  
 15 A I do.  
 16 Q How old are they?  
 17 A Three stepsons in their 40s and 30s. And  
 18 a daughter who's 17.  
 19 Q And your husband is -- is Gezer, correct?  
 20 A Correct. Geza.  
 21 Q And he's -- sorry. Geza.  
 22 And he's in the art world, if I can use  
 23 that loosely?  
 24 A Yes, he is.  
 25 Q He's an expert on Fabergé, for example?

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1 those auction houses if you felt that they were  
 2 forthright and had the standards that you'd  
 3 expect an auction house to live up to, correct?  
 4 A Yes.  
 5 Q How did you first become interested in  
 6 art?  
 7 A My family has a background in art. My  
 8 grandparents were collectors. So I was kind of  
 9 surrounded by it my whole life.  
 10 I studied a year in Florence. Took art  
 11 history in Florence during my undergraduate  
 12 year.  
 13 Q Where?  
 14 A Stanford, in Florence.  
 15 And then after my graduate school, I ended  
 16 up switching the focus of what I wanted to do  
 17 and ended up at Christie's.  
 18 And . . .  
 19 Q So did you grow up with art in your home?  
 20 A Yes, I did.  
 21 Q Do you remember your first -- I don't  
 22 know -- your first object that kind of had an  
 23 affect on you?  
 24 A Sure.  
 25 Q What one was it?

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1 A He is.  
 2 Q And he is also associated with Winston,  
 3 correct?  
 4 A He's a consultant for us.  
 5 Q Does he have a position in any museums?  
 6 A He's a -- he's called an adjunct curator  
 7 or was at -- I guess curator at Virginia Museum  
 8 of Fine Arts. And he's worked with a lot of  
 9 museums over his career.  
 10 Q And he did speak at the DIA, correct?  
 11 A I did not -- I didn't remember that. I'm  
 12 sure he has.  
 13 Q What's your favorite museum?  
 14 A I have a favorite museum. One of my --  
 15 one of my favorites is the Frick in New York.  
 16 Q Why is it one of your favorites?  
 17 A I think it's a manageable museums. And I  
 18 like house museums.  
 19 Q House museums?  
 20 A Single owner collections that have been  
 21 turned into museums.  
 22 Q Okay. Is it open to the public?  
 23 A Yes, it is.  
 24 Q How do you define a museum?  
 25 A That's a question I've never been asked

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1 before.

2 A museum is probably first and foremost an

3 educational institution for the public good,

4 and a place where people can go and see a

5 variety of Works of Art.

6 **Q Are museums important?**

7 A Of course they are.

8 **Q Why?**

9 A Because -- I'm -- I'm a little

10 philosophical here.

11 Art is the universal language. I think

12 art brings -- it is our culture. It's part of

13 our culture. And it's a very important way to

14 transmit culture worldwide.

15 **Q You had art in your home, you said, right?**

16 A Correct.

17 **Q Most people don't have it in their home,**

18 **though, right?**

19 A You'd be surprised. Most people do have

20 it in their home. They just don't consider

21 perhaps watches to be art or baseball cards to

22 be art.

23 So most people have it.

24 **Q For most of the public to have a primary**

25 **experience with Master Works, museums are their**

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1 know, is a -- what they call a robber baron.

2 His collection was left in his house and

3 subsequently added to by the museum.

4 **Q Does the museum hold its objects in trust?**

5 A I believe so, yeah.

6 **Q And you give to that museum, correct?**

7 A To the Pierpont Morgan Museum?

8 Yes, I do. To the Pierpont Morgan

9 Library, yes, I do.

10 **Q And why do you do that?**

11 A I'm a Fellow of the Pierpont Morgan

12 Library. I collect all master drawings or I

13 have in the past, and that's something they are

14 very interested in and they invited me to

15 become a Fellow.

16 **Q Do you want Morgan Museum to remain open**

17 **and available to the public?**

18 A Yes, I do.

19 **Q Is that why you give?**

20 A That's one of the reasons.

21 MR. O'REILLY: Can I have five minutes?

22 MS. GARTEL: Yes.

23 THE VIDEOGRAPHER: The time is 1:11 p.m.

24 We're going off the record.

25 (Recess taken.)

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1 **only option, correct?**

2 A Museums or auction houses.

3 Auction houses are open to the public.

4 **Q Are museums important to a community,**

5 **culturally?**

6 A I believe they are, yes.

7 **Q Educationally?**

8 A Yes.

9 **Q Economically?**

10 A Yes.

11 **Q Can they transform a neighborhood?**

12 A Can they transform a neighborhood?

13 They add to a neighborhood's aura, yes.

14 **Q Do you like living in New York?**

15 A I love living in New York.

16 **Q Would New York be the same place without**

17 **museums?**

18 A No.

19 **Q Would New York be the same place without**

20 **fine art?**

21 A I can't even answer that question. I

22 can't imagine that.

23 **Q What's the Morgan Museum?**

24 A The Pierpont Morgan Museum is another

25 house museum. The Pierpont Morgan, as you may

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1 THE VIDEOGRAPHER: This is the

2 continuation of Tape No. 3. The time is

3 1:22 p.m. and we're back on the record.

4 BY MR. O'REILLY:

5 **Q Could you turn to Page 474 of your report**

6 **for a moment, for the value of the appraisal,**

7 **please.**

8 **And it's right before the tab that's**

9 **marked "Fine Art Comparable."**

10 A You said 474 or --

11 **Q Correct, 474.**

12 **You see the section entitled "Market**

13 **Overviews"?**

14 A Yes.

15 **Q I just want to understand, is that**

16 **included in your appraisal to provide context**

17 **for the work that was done by the appraisers?**

18 A Market overview is the -- the only reason

19 the market are part of USPAP's format.

20 **Q Are you offering any opinions on these**

21 **overviews?**

22 A Value opinions or what's your question?

23 **Q Yeah.**

24 **So your opinion, I think, is stated**

25 **earlier in your report, which is that you**

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1 believe that the works that you valued was  
 2 1.75 billion or thereabouts, correct?  
 3 A Yes.  
 4 Q And that is your opinion, and that's the  
 5 sum total of your opinion, correct?  
 6 A Correct.  
 7 Q So this puts that in context, but you're  
 8 not any -- offering any opinions in the case as  
 9 to the correctness of these statements, are  
 10 you?  
 11 A Well, these are giving us sort of context  
 12 for the various areas of -- of the market.  
 13 Q That's fine. Thank you very much.  
 14 I just want to introduce one more exhibit.  
 15 (Deposition Exhibit 2, Notice of  
 16 Deposition, marked for identification as of  
 17 this date.)  
 18 BY MR. O'REILLY:  
 19 Q I'm placing before you what's been marked  
 20 as Exhibit 2.  
 21 Does that look like the notice of your  
 22 video deposition?  
 23 A Yeah, I had an e-mail copy of it. Yes, it  
 24 does.  
 25 Q Thank you.

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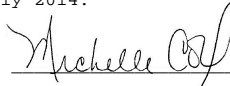
1 THE VIDEOGRAPHER: Anybody else?  
 2 MR. O'REILLY: Any other questions?  
 3 Anybody on the phone?  
 4 Thank you very much for your time.  
 5 THE WITNESS: Thank you.  
 6 THE VIDEOGRAPHER: One second.  
 7 This concludes Tape No. 3. It also  
 8 concludes today's deposition. The total time  
 9 on the record is 2 hours and 57 minutes. The  
 10 time now is 1:26 p.m.  
 11 (Time noted: 1:26 p.m.)  
 12  
 13 \_\_\_\_\_  
 14 ELIZABETH VON HABSBURG  
 15 Subscribed and sworn to before me  
 16 this \_\_\_\_\_ day of \_\_\_\_\_, 2014.  
 17 \_\_\_\_\_  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

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1 MR. O'REILLY: And we'll just place on the  
 2 record that I've got no more questions. Just  
 3 place on the record that once you produce the  
 4 appraisal file, we'll take a look at it to  
 5 determine whether or not there's any reason to  
 6 call this witness back.  
 7 But as of today, I'm done.  
 8 MS. GARTEL: Okay. I just wanted to add  
 9 that this notice contains a misspelling of  
 10 Ms. von Habsburg's name. It should be a "B"  
 11 instead of a "P," just for the record.  
 12 (Continued on the following page to  
 13 include jurat.)  
 14  
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C E R T I F I C A T E

1 STATE OF NEW YORK )  
 2 )  
 3 :ss  
 4 COUNTY OF NEW YORK )  
 5 )  
 6 I, MICHELLE COX, a Notary Public within  
 7 and for the State of New York, do hereby  
 8 certify:  
 9 That ELIZABETH VON HABSBURG, the witness  
 10 whose deposition is hereinbefore set forth, was  
 11 duly sworn by me and that such deposition is a  
 12 true record of the testimony given by the  
 13 witness.  
 14 I further certify that I am not related to  
 15 any of the parties to this action by blood or  
 16 marriage, and that I am in no way interested in  
 17 the outcome of this matter.  
 18 IN WITNESS WHEREOF, I have hereunto set my  
 19 hand this 31st day of July 2014.  
 20  
 21   
 22 MICHELLE COX, CLR  
 23  
 24  
 25

<p><b>\$</b></p> <p><b>\$1.7</b> 101:8 105:12</p> <p><b>\$10</b> 116:16</p> <p><b>\$100</b> 104:11 131:24</p> <p><b>\$2</b> 53:13 103:14</p> <p><b>\$200</b> 104:10 131:24</p> <p><b>\$5</b> 118:2</p> <p><b>\$500</b> 104:10 131:2</p> <hr/> <p><b>1</b></p> <p><b>1</b> 7:2 39:18 40:1 47:4 53:13 68:7 69:23 77:7, 14 94:19 96:20 102:10</p> <p><b>1,742,245,750</b> 90:15</p> <p><b>1.75</b> 106:5,12 154:2</p> <p><b>10</b> 26:11,12 37:13 38:6 42:20 47:21 53:12 94:2, 9,14 105:22 144:20</p> <p><b>10,000</b> 52:23</p> <p><b>100</b> 34:2,4 53:23 109:5,8 110:3</p> <p><b>100,000</b> 34:9 36:11,12</p> <p><b>10017</b> 7:11</p> <p><b>10:22</b> 68:3</p> <p><b>10:29</b> 68:8</p> <p><b>11:12</b> 102:10</p> <p><b>11:19</b> 102:14</p> <p><b>12</b> 26:12 44:4,7 89:24 103:18 104:7 105:4,8,25 106:4</p> <p><b>12:00</b> 133:25 134:2</p> <p><b>12:52</b> 134:4,9</p> <p><b>13</b> 104:7</p> <p><b>13-53846</b> 7:8</p> <p><b>15</b> 144:20</p> <p><b>17</b> 148:18</p> <p><b>18</b> 11:10</p> <p><b>1800</b> 84:25</p> 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**Exhibit H**

1	A	B	C	D	E	F	G	H	I	J
2	Sort Number	Object Number	Primary Maker	Title	Dated	Medium	Credit Line	Value	EnteredDate	
3	1883 1	83.1	Francis Davis Millet	Reading the Story of Oenone	ca. 1883	oil on canvas	Detroit Museum of	\$ 300,000.00	2002-04-15 16:01:27	
4	1883 2	83.2	Unknown	Spiritual Betrothal of Saint Cath	c. 17th Cen	Oil on canvas	Gift of His Holiness	\$ 2,000.00	1997-01-06 00:40:35	
5	1885 1	85.1	Giorgio Vasari	The Sacrifice at Lystra	c. 1550	Pen and brown ink on buff paper	Gift of James E. Scri	\$ 500.00	1997-01-06 00:40:35	
6	1885 2	85.2	Bartolomeo Passarot	Study of a Seated Man	1550/1600	Pen and brown ink over black c	Gift of James E. Scri	NULL		
7	1885 3	85.3	Rembrandt Peale	The Court of Death	1820	Oil on canvas	Gift of George H. S	\$ 1,000,000.00	1997-01-06 00:40:35	
8	1886 1 1	86.1.1	Henry Chapman Ford	San Diego	1883	etching printed in black ink on j	Gift of Clara A. Ave	\$ 500.00	1997-01-06 00:40:35	
9	1886 1 2	86.1.2	Henry Chapman Ford	San Luis Rey de Francia	1883	Etching printed in black ink on j	Gift of Clara A. Ave	NULL		
10	1886 1 3	86.1.3	Henry Chapman Ford	San Juan Capistrano	1883	Etching printed in black ink on j	Gift of Clara A. Ave	NULL		
11	1886 1 4	86.1.4	Henry Chapman Ford	San Gabriel	1883	Etching printed in black ink on j	Gift of Clara A. Ave	NULL		
12	1886 1 5	86.1.5	Henry Chapman Ford	San Fernando	1883	Etching printed in black ink on j	Gift of Clara A. Ave	NULL		
13	1886 1 6	86.1.6	Henry Chapman Ford	San Buenaventura	1883	Etching printed in black ink on j	Gift of Clara A. Ave	NULL		
14	1886 1 7	86.1.7	Henry Chapman Ford	Santa Barbara	1883	Etching printed in black ink on j	Gift of Clara A. Ave	NULL		
15	1886 1 8	86.1.8	Henry Chapman Ford	Santa Barbara	1883	Etching printed in black ink on j	Gift of Clara A. Ave	NULL		
16	1886 1 9	86.1.9	Henry Chapman Ford	Santa Ynez	1883	Etching printed in black ink on j	Gift of Clara A. Ave	NULL		
17	1886 1 10	86.1.10	Henry Chapman Ford	La Purissima Concepcion (Old)	1883	Etching printed in black ink on j	Gift of Clara A. Ave	NULL		
18	1886 1 11	86.1.11	Henry Chapman Ford	La Purissima Concepcion	1883	Etching printed in black ink on j	Gift of Clara A. Ave	NULL		
19	1886 1 12	86.1.12	Henry Chapman Ford	San Luis Obispo de Tolozo	1883	Etching printed in black ink on j	Gift of Clara A. Ave	NULL		
20	1886 1 13	86.1.13	Henry Chapman Ford	San Miguel	1883	Etching printed in black ink on j	Gift of Clara A. Ave	NULL		
21	1886 1 14	86.1.14	Henry Chapman Ford	San Antonio de Padua	1883	Etching printed in black ink on j	Gift of Clara A. Ave	NULL		
22	1886 1 15	86.1.15	Henry Chapman Ford	Na. Sa. de la Soledad	1883	Etching printed in black ink on j	Gift of Clara A. Ave	NULL		
23	1886 1 16	86.1.16	Henry Chapman Ford	San Juan Bautista	1883	Etching printed in black ink on j	Gift of Clara A. Ave	NULL		
24	1886 1 17	86.1.17	Henry Chapman Ford	San Carlos de Monterey, or Carm	1883	Etching printed in black ink on j	Gift of Clara A. Ave	NULL		
25	1886 1 18	86.1.18	Henry Chapman Ford	San Carlos de Monterey, or Carm	1883	Etching printed in black ink on j	Gift of Clara A. Ave	NULL		
26	1886 1 19	86.1.19	Henry Chapman Ford	Santa Cruz	1883	Etching printed in black ink on j	Gift of Clara A. Ave	NULL		
27	1886 1 20	86.1.20	Henry Chapman Ford	Santa Clara	1883	Etching printed in black ink on j	Gift of Clara A. Ave	NULL		
28	1886 1 21	86.1.21	Henry Chapman Ford	San Jose	1883	Etching printed in black ink on j	Gift of Clara A. Ave	NULL		
29	1886 1 22	86.1.22	Henry Chapman Ford	Dolores	1883	Etching printed in black ink on j	Gift of Clara A. Ave	NULL		
30	1886 1 23	86.1.23	Henry Chapman Ford	San Francisco de Solano	1883	Etching printed in black ink on j	Gift of Clara A. Ave	NULL		
31	1886 1 24	86.1.24	Henry Chapman Ford	Pala	1883	Etching printed in black ink on j	Gift of Clara A. Ave	NULL		
32	1886 2	86.2	Frank Knox Morton R	The Missing Vessel	1884	Oil on canvas	Detroit Museum of	\$ 5,000.00	1997-01-06 00:40:35	
33	1888 1	88.1	John George Brown	A Surprise Party	1888	Oil on canvas	Detroit Museum of	NULL		
34	1888 2	88.2	Ellen Kendall Baker	The Young Artist	1885	Oil on canvas	Gift of the Friends	\$ 150,000.00	2010-06-17 11:04:57	
35	1889 1	89.1	Charles Harry Eaton	The Lily Pond	c. 1886	Oil on canvas	Detroit Museum of	\$ 100,000.00	1997-01-06 00:40:35	
36	1889 2	89.2	Giovanni Paolo d' Ag	Double Portrait of a Young Man a	c. 1520	Oil on canvas	Gift of James E. Scri	\$ 30,000.00	1997-01-06 00:40:35	
37	1889 7	89.7	Franciabigio	Portrait of a Man	15th/16th	Paint on wood panel	Gift of James E. Scri	NULL		
38	1889 8	89.8	Unknown	Saint Mercurius	18th Centu	Paint on wood panel	Gift of James E. Scri	\$ 7,500.00	1997-01-06 00:40:36	
39	1889 11	89.11	Giovanni Battista Cim	Madonna and Child	Late15th/e	Paint on wood panel	Gift of James E. Scri	\$ 2,000,000.00	2009-07-07 18:05:56	
40	1889 12	89.12	Monaldus da Cornet	The Marriage of the Virgin	early 16th	Oil on canvas	Gift of James E. Scri	NULL		
41	1889 14	89.14	Pier Francesco Fiorer	Madonna and Child with the Infan	1460/1480	Paint on arched wood panel	Gift of James E. Scri	\$ 25,000.00	1997-01-06 00:40:35	
42	1889 15	89.15	Pierre-Louis Cretey	The Nativity	17th/18th	Oil on canvas	Gift of James E. Scri	\$ 100,000.00	2010-05-24 13:12:52	
43	1889 17	89.17	Carlo Maratta	Madonna and Child with the You	late 18th C	Oil on copper panel	Gift of James E. Scri	NULL		
44	1889 18	89.18	Master of the San Mi	Madonna and Child with Two Ang	15th Centu	Tempera on arched wood pane	Gift of James E. Scri	\$ 5,000.00	1997-01-06 00:40:35	
45	1889 19	89.19	Allegretto Nuzi	Madonna and Child with Saints, C	mid 14th C	Tempera on wood panel	Gift of James E. Scri	\$ 800,000.00	2007-11-16 14:05:56	
46	1889 20	89.20	Giovanni Paolo Panin	Ruins of a Triumphal Arch in the F	1717/1719	Oil on canvas	Gift of James E. Scri	\$ 175,000.00	1997-01-06 00:40:35	
47	1889 21	89.21	Giampetrino	Salvator Mundi	16th Centu	Paint on wood panel	Gift of James E. Scri	\$ 35,000.00	1997-01-06 00:40:35	
48	1889 22	89.22	Bagnacavallo (Bartol	The Virgin Enthroned with Saint A	1529	Paint on wood panel	Gift of James E. Scri	NULL		
49	1889 23	89.23	Guido Reni	Head of Christ Crowned with Tho	early 1630	Oil on copper panel	Gift of James E. Scri	\$ 2,200,000.00	1997-06-30 11:05:15	
50	1889 24	89.24	Etienne Parrocel	Apparition of the Virgin to Saint P	18th Centu	Oil on canvas	Gift of James E. Scri	\$ 65,000.00	1997-01-06 00:40:35	
51	1889 25	89.25	Sassoferrato	Madonna and Child	mid 17th c	Oil on canvas	Gift of James E. Scri	\$ 750,000.00	1997-01-06 00:40:35	
52	1889 30	89.30	Gerrit Adriaensz. Ber	View of the Grote Kerk in Haarler	1695	Oil on canvas	Gift of James E. Scri	\$ 1,500,000.00	2009-04-16 15:47:03	
53	1889 31	89.31	Jan Wils	A Pass in the Apennines	c. 1655/16	Oil on oak panel	Gift of James E. Scri	\$ 300,000.00	1997-01-06 00:40:35	
54	1889 32	89.32	Quiringh Gerritsz van	The Vegetable Stall	1665	Oil on oak panel	Gift of James E. Scri	\$ 110,000.00	2009-04-20 15:12:11	
55	1889 33	89.33	Aelbert Cuypp	Landscape with Maid Milking a C	c. 1655	Oil on canvas	Gift of James E. Scri	\$ 200,000.00	1997-01-06 00:40:35	
56	1889 34	89.34	Karel Dujardin	Return of the Holy Family from Eg	1662	Oil on canvas	Gift of James E. Scri	\$ 750,000.00	2009-04-17 16:25:31	
57	1889 35	89.35	Jan Provost	The Last Judgment	c. 1525	Oil on oak panel	Gift of James E. Scri	\$ 3,500,000.00	1997-11-17 11:27:44	
58	1889 36	89.36	Wouter Knijff	View of the North Port at Hoorn	1648	Oil on oak panel	Gift of James E. Scri	\$ 20,000.00	1997-01-06 00:40:35	
59	1889 37	89.37	Willem de Heusch	Italian Landscape	c. 1650	Oil on oak panel	Gift of James E. Scri	\$ 30,000.00	1997-11-17 11:02:09	
60	1889 38	89.38	Meindert Hobbema	A River Scene	1658	Oil on oak panel	Gift of James E. Scri	\$ 65,000.00	1997-11-17 11:02:38	

**Exhibit I**



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**Entered on Docket  
May 25, 2010**

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re )  
ASSET RESOLUTION, LLC, et al., )  
  
Debtors, )  
  
\_\_\_\_\_)  
Affects All Debtors )  
  
\_\_\_\_\_)

Case No. BK-S-09-32824-RCJ  
(Lead Case)  
  
Jointly Administered with Case Nos.:  
BK-S-09-32831-RCJ; BK-S-09-32839-RCJ;  
BK-S-09-32843-RCJ; BK-S-09-32844-RCJ;  
BK-S-09-32846-RCJ; BK-S-09-32849-RCJ;  
BK-S-09-32851-RCJ; BK-S-09-32853-RCJ;  
BK-S-09-32868-RCJ; BK-S-09-32873-RCJ;  
BK-S-09-32875-RCJ; BK-S-09-32878-RCJ;  
BK-S-09-32880-RCJ; BK-S-09-32882-RCJ.  
  
**Chapter 7  
ORDER ON CERTAIN DIRECT  
LENDERS' MOTION FOR THE  
IMPOSITION OF SANCTIONS**

Presently before the Court is Certain Direct Lenders' Motion for the Imposition of Sanctions (#392). Certain Direct Lenders' ("Movants") move for sanctions against Silar Advisors, LP ("Silar"), Robert Leeds ("Leeds"), Jay Gracin ("Gracin"), Sara Pfrommer ("Pfrommer"), Tracy Klestadt and Klestadt & Winters, LLP (collectively, "Klestadt"), Katherine M. Windler ("Windler"), and Bryan Cave, LLP ("Bryan Cave") (collectively, "Respondents") under Rule 9011 of the Federal Rules of Bankruptcy Procedure and the Court's inherent power. Several of the Respondents filed oppositions (#634, #644, #648) and Movants replied (#674). The Court heard oral argument on April 8, 2010 and orally granted Movant's motion but allowed for further filings regarding the amount of sanctions. (see #725). Movants then filed several declarations of fees and expenses (#740, #741, #742, #743, #746). Respondents filed several objections to these declarations (#808, #812, # 816). The Court

1 now issues the following written order. IT IS HEREBY ORDERED that Certain Direct Lenders'  
2 Motion for the Imposition of Sanctions (#392) is GRANTED.

3 **I. BACKGROUND**

4 **A. The Court takes jurisdiction over the loan servicing rights.**

5 Pursuant to the Asset Purchase Agreement (“APA”) and Confirmation Order entered  
6 by the Honorable Linda B. Riegle in the chapter 11 case of USA Commercial Mortgage  
7 Company and its affiliates (collectively, “USACM”), Compass Partners, LLC and Compass  
8 USA SPE LLC (collectively, “Compass”) acquired USACM’s loan servicing rights under certain  
9 Loan Servicing Agreements (“LSAs”). Compass also acquired fractional beneficial interests  
10 in a number of loans originated by USACM. The APA did not alter the terms of the LSAs, and  
11 the Confirmation Order specifically required the parties to abide by those terms. The APA  
12 provides that “[t]he United States Bankruptcy Court for the District of Nevada shall be the  
13 exclusive forum for the enforcement of the terms of this Agreement.”

14 After this Court withdrew references to the action styled *3685 San Fernando Lenders,*  
15 *LLC v. Compass USA SPE, LLC*, No. 2:07-cv-00892 (“892 Case”), it entered a preliminary  
16 injunction protecting Compass from being terminated as the direct lenders’ loan servicer under  
17 the LSAs absent compliance with the preliminary injunction. The preliminary injunction  
18 enabled 51% or more of the direct lenders to move for termination of Compass as their loan  
19 servicer. The preliminary injunction also required Compass to hold in trust, and not disburse,  
20 certain funds without “further order of this Court obtained upon a motion brought by a party  
21 in interest after appropriate notice.”<sup>1</sup> The preliminary injunction expressly stated that “[t]his  
22 Court has and shall retain in personam jurisdiction over the Plaintiff Lenders and Compass  
23 and in rem jurisdiction over Loans and LSAs relating thereto, and the conveyance of title of  
24 collateral acquired in connection therewith.”

25 \_\_\_\_\_  
26 1  
27 Pursuant to that requirement, when Silar and Asset Resolution sought the approval of this  
28 Court in February 2009 to distribute the trust funds from one account into loan specific  
sub-accounts for greater transparency to the direct lenders, they represented that they  
“understand and acknowledge that funds will not be distributed from these accounts  
without further order of the Court.”

1 Silar subsequently moved in the 892 Case to substitute Asset Resolution for Compass  
2 as the loan servicer under the LSAs as well as under the preliminary injunction. In April 2009,  
3 this Court acknowledged, but did not approve, the substitution of Asset Resolution for  
4 Compass, but added Silar and Asset Resolution as parties to the preliminary injunction over  
5 which it had in personam jurisdiction and for whose protection the preliminary injunction  
6 extended. The Court added Silar to the preliminary injunction because it was concerned that  
7 Asset Resolution was “just a shell” being interposed to protect Silar from liability, and to make  
8 clear that the termination of the loan servicing rights under the LSAs would also eliminate any  
9 interest that Silar had in those rights. The preliminary injunction and substitution order were  
10 two of this Court’s orders effectuating its jurisdiction over the LSAs.

11 **B. The Court determines the parties’ entitlement to servicing fees under the LSAs.**

12 On July 6, 2009, this Court issued partial summary judgment rulings from the bench in  
13 the 892 Case with regard to the compensation owed to the loan servicer under the LSAs.  
14 Those rulings were then memorialized in this Court’s written order dated September 19, 2009.  
15 Specifically, the Court held that:

16 Section 5 of the LSAs provides for an authorization of a method of  
17 compensation for the loans servicer. Defendants do not collect default interest  
18 or late charges from the borrower in the event that the amount ultimately  
19 collected is less than the principal amount of the loan under “b” and “c” of  
20 [section 5 of the LSAs’] language. Defendants do have a right to retain the  
21 annual servicing fee under the “a” portion of [section 5 of the LSAs’] language.  
22 A loan servicer is not entitled to recover default interest and late fees directly  
23 from the direct lender.

24 The Court also held that the loan servicer under the LSAs is a fiduciary of the direct lenders  
25 as to the handling of all funds collected by the servicer on behalf of the direct lenders.

26 The Court’s ruling at the summary judgment hearing held on July 6, 2009, also  
27 delineated the calculation of the servicing fee to which the loan servicer is entitled under the  
28 LSAs. Specifically, the Court stated:

THE COURT: So I think I’m ready to find and I will so find that the meaning of  
this is that with respect to the example I have used and with respect to this  
particular LSA . . . [y]ou collected \$1,000,000 without designation. You did  
collect \$1,000,000, and I think under A you have a right to keep one percent of  
the maximum principal amount of the loan. . . . I think you have the right to do  
that. I think under A it just simply says retain, and you got \$1,000,000, and you

1 have the right to retain out of it. And we don't care whether its designated  
2 interest or default interest or principal or anything else. You've got the right to  
twelve-twelves [sic] of your annual servicing fee. . . .

3 MR. COLLINS: . . . Is the Court saying that they got one . . . percent of the  
4 twenty-six-five or one percent of eight and a half?

5 THE COURT: Of the actual collection. I had another step in that finding, and  
6 that is that the property was part of the collection. The value I placed on it was  
7 not the value at the time of the foreclosure sale of a maximum possible  
8 (indiscernible). The value was the eight-and-a-half million dollars. Since the  
whole transaction now is collapsible, the whole thing has been completed,  
including the sale of the property or at least a proposed sale, that the one  
percent is of the eight-and-a-half million dollars. That was my ruling  
(indiscernible).

9 MR. COLLINS: Right. And is that your ruling today, too, your Honor, just as far  
10 as the servicing fees?

11 THE COURT: If we have a total, complete sale, and eight-and-a-half million  
dollars was realized off the REO, yeah. . . . That's the ruling.

12 In other words, the loan servicer under the LSAs is entitled to receive one accrued annual  
13 servicing fee, and that fee is calculated by multiplying the weighted average of of the servicing  
14 fee percentage specified in the LSAs for one year by the total amount ultimately collected for  
15 that loan.

16 Further, on August 28, 2009, the Court entered its order approving the conveyance of  
17 title to Gess Property based on a sale price of \$8.5 million. In that order, the Court  
18 determined that Asset Resolution was entitled to recover only \$94,000 as a servicing fee in  
19 connection with the Gess Property. Asset Resolution had claimed that it was entitled to retain  
20 all proceeds from that sale (after paying off a tax lien in the amount of approximately \$2  
21 million) as servicing compensation that was purportedly due to the loan servicer under the  
22 LSAs.

23 On October 7, 2009, Silar and Asset Resolution commenced an adversary proceeding  
24 in the still pending USACM bankruptcy case, seeking reimbursement of amounts that were  
25 purportedly collectible by the loan servicer under the LSAs but that the Court's prior summary  
26 judgment order had held were not recoverable by the loan servicer under the LSAs. Asset  
27 Resolution asserted that jurisdiction was proper in the United States Bankruptcy Court for the  
28 District of Nevada "by virtue of [the Confirmation Order] and APA," and that venue was also

1 proper in that court. That adversary complaint was filed by Bryan Cave (and Kolesar &  
2 Leatham, Chtd. as local counsel).

3 **C. Silar and Asset Resolution commence action in Nevada state court.**

4 In August 2009, Silar and Asset Resolution sought to evade this Court's jurisdiction,  
5 as well as the import of its summary judgment and Gess Property rulings, by: (1) moving to  
6 dismiss the 892 Case for lack of subject matter jurisdiction, and (2) filing a complaint in  
7 Nevada state court naming nearly all direct lenders as defendants and asserting  
8 claims—already pending in the 892 Case—for declaratory judgment, breach of contract, and  
9 breach of the covenant of good faith and fair dealing. That complaint also contained various  
10 tort claims that had not been asserted in the 892 Case. Approximately four weeks prior to the  
11 commencement of Debtors' chapter 11 cases, Movants removed the Nevada state court case  
12 to this Court, and successfully sought the dismissal of that action as duplicative and in  
13 violation of the compulsory counterclaim rule.<sup>2</sup> Only eight days prior to the commencement  
14 of Debtors' chapter 11 cases, this Court denied Silar's and Asset Resolution's motion to  
15 dismiss for lack of subject matter jurisdiction. The concomitant filing of Silar's and Asset  
16 Resolution's motion to dismiss for lack of subject matter jurisdiction and state court complaint  
17 constituted an attempt to evade this Court's jurisdiction.

18 **D. Debtors commence chapter 11 case in the Souther District of New York.**

19 **1. Respondents authorize and facilitate the filing of the chapter 11 cases.**

20 On October 14, 2009, Debtors commenced their chapter 11 cases in the United States  
21 Bankruptcy Court for the Southern District of New York. The chapter 11 petitions attached  
22 resolutions executed by Pfrommer, as Chief Restructuring Officer and General Counsel of  
23 each of the Debtors, certifying that "at a duly called meeting of the members" she was

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24  
25 <sup>2</sup> On December 15, 2009, this Court granted Movants' motion to dismiss the removed  
26 Nevada state court case and gave Silar and Asset Resolution fourteen days to amend their  
27 counterclaims in the 892 Case. On December 29, 2009, Asset Resolution amended its  
28 counterclaims in the 892 Case to include the tort claims it had asserted in the removed  
Nevada state court case, but failed to name any additional direct lenders as parties. Instead,  
on December 30, 2009, in yet another attempt to evade this Court's jurisdiction, Asset  
Resolution filed an adversary complaint in the chapter 11 cases in which it named all direct  
lenders as defendants.

1 “authorized and directed” to commence their chapter 11 cases. At that time, Asset Resolution  
2 was the sole managing member of 14 SPE Debtors, Silar was the sole owner and manager  
3 of Asset Resolution, Leeds was the President and Chief Executive Officer of Asset Resolution,  
4 and Gracin was the Vice President, Chief Operating Officer, and Secretary of Asset  
5 Resolution. “In [her] capacity as Chief Restructuring Officer, [Pfrommer] solicit[ed] input from  
6 Mr. Leeds because he is both an owner of the company for which [she was] acting and also  
7 of the DIP lender.”

8 In advance of the filing of the chapter 11 cases, Asset Resolution paid a \$300,000  
9 retainer to Bryan Cave on September 29, 2009, and a \$300,000 retainer to Klestadt on  
10 October 9, 2009. Bryan Cave prepared Debtors’ bankruptcy schedules and statements of  
11 financial affairs before Debtors filed their chapter 11 petitions. Tracy Klestadt has admitted  
12 that he recommended the commencement of the chapter 11 cases. Pfrommer “was retained  
13 by ARC at the beginning of August 2009 . . . to advise regarding strategy to protect the value  
14 of the assets that ARC is servicing . . . [Her] instructions came from, and [her] services were  
15 rendered to, Jay Gracin and Robert Leeds in New York.” Pfrommer “was physically present  
16 in New York during the discussions that led to the decision to commence these chapter 11  
17 cases . . . .” As Chief Restructuring Officer of Debtors, Pfrommer was to be paid \$35,000 per  
18 month.

19 In Debtors’ Rule 1007 Affidavit executed by Pfrommer, she made the following  
20 statements related to the improper purposes of the chapter 11 cases as well as the importance  
21 of Klestadt and Bryan Cave to Debtors’ frivolous chapter 11 cases:

- 22 • ARC currently holds \$10,771,332 in an account for the benefit of itself and various  
23 direct lenders. The money in this account consists of proceeds from the sale of various  
24 real properties by Compass. ARC, as successor-in-interest to Compass’ rights in this  
25 account, claims that it is entitled to all such funds in respect of servicing fees and the  
26 right to collect servicing fees acquired from the USACM bankruptcy. The Direct  
27 Lenders claim that ARC is not entitled to any of such funds. The validity, priority and  
28 extent of the interests of various claimants to this fund will be one of the key issues that  
must be resolved in the course of these bankruptcy cases.
- ARC is currently a defendant and counter-claimant in the Nevada Litigation. The  
claims asserted against ARC go to the very heart of the value and extent of the  
Debtors’ assets and as such will be stayed by the application of Section 362 upon the



1 filing of the Debtors' cases.<sup>3</sup>

- 2 • The retention of chapter 11 professionals is essential to the Debtors' reorganization efforts. Concurrently with this filing, the Debtors are seeking to retain and employ Klestadt . . . . The Debtors believe . . . that the services to be provided by Klestadt & Winters, LLP are necessary for the Debtors' successful reorganization efforts. The Debtors are also seeking to retain and employ Bryan Cave, LLP . . . . Because of its expertise and institutional knowledge of the Debtors' operating history, its business and litigation matters, Bryan Cave, LLP is uniquely situated to advise and assist the Debtors in the preparation of their schedules and statement of financial affairs . . . .
- 7 • Conclusion: The Debtors believe the protections afforded by chapter 11 will enable them [sic] wind-up their affairs in an orderly fashion and to preserve the value of their assets for the benefit of their creditors.

8 As shown below, each of these statements reflects the improper purpose and frivolousness  
9 of Debtors' chapter 11 cases.

10 **2. Respondents' post-petition conduct**

11 **a. Debtors' response to the Anchor B Property preliminary injunction**

12 On October 16, 2009, or two days after the filing of the chapter 11 cases, this Court  
13 held a preliminary injunction hearing in the 892 Case in connection with the sale of the Anchor  
14 B Property. At that hearing, this Court rejected Asset Resolution's contention that the filing  
15 of the chapter 11 cases deprived it of in rem jurisdiction over those assets being held in trust  
16 for the direct lenders by Debtors because such assets were not property of Debtors' estates.

17 As a result of that hearing, Pfrommer filed a Supplemental Rule 1007 Affidavit in which  
18 she advised that Bankruptcy Court for the Southern District of New York that this Court's  
19 continued exercise of in rem jurisdiction notwithstanding the automatic stay had:

20 caused significant disruption in the Debtors' administration of these chapter 11  
21 Cases by calling into question whether this Court or the Nevada District Court  
22 has jurisdiction over properties and cash held by the Debtors. Among other  
23 things, the October 16 Ruling has cast into doubt the Debtors' ability, as  
servicer of the loans, to entertain offers of sale of the properties and to seek approval of this Court of such sales, a central matter to a chapter 11 case.

24 Debtors then filed both a writ of mandamus and notice of appeal with the United States Court  
25 of Appeals for the Ninth Circuit, contending that "the Debtors believe that the October 16

26 \_\_\_\_\_  
27 <sup>3</sup> The filing of Debtors' chapter 11 cases automatically stayed the bench trial related  
28 to the termination of Asset Resolution's purported loan servicing rights under the LSAs that  
was scheduled to commence in the 892 Case approximately six weeks later on December 8,  
2009.

1 Ruling and the Preliminary Injunction Order is [sic] an impermissible exercise of jurisdiction  
 2 in light of the automatic stay . . . over matters core to these chapter 11 Cases.” In reply to this  
 3 Court’s response to the writ of mandamus, Windler, purportedly on behalf of Asset Resolution,  
 4 contended that Debtors’ bankruptcy cases as well as the 892 Case should be reassigned to  
 5 a new judge.<sup>4</sup>

6 **b. Debtors’ response to Movants’ motion to transfer venue**

7 In response to Movants’ motion to transfer venue of the chapter 11 cases from the  
 8 Southern District of New York to the District of Nevada, Debtors opposed the motion and  
 9 noted that Pfrommer, as Debtors’ Chief Restructuring Officer, “makes decisions with respect  
 10 to the Debtors in consultation with Silar . . . and their general bankruptcy counsel, Klestadt . . .  
 11 [and] was physically present in New York for the week preceding the Petition Date and most  
 12 of the following week.” Debtors, in a brief filed by Klestadt and supported by affidavits  
 13 executed by Gracin and Pfrommer, also argued that:

- 14 • “[T]he ‘learning curve’ that the Nevada District Court may have is significantly  
 15 overstated. These chapter 11 Cases and the Nevada Litigation are not co-terminal.  
 16 While they share common facts and history, those common facts and history are not  
 17 dispositive of these chapter 11 Cases.”
- 18 • The focus of the most important factor in determining whether to transfer venue—the  
 19 economic and efficient administration of the bankruptcy estate—was “where the debtor  
 20 has the best chance to reorganize.”
- 21 • “[T]he Direct Lender Movants argue that the 2007 Preliminary Injunction establishes  
 22 *in personam* and *in rem* jurisdiction over all the Debtors, Silar, all of the Loans, all of  
 the LSAs, and all of the collateral securing the loans. This is a contention that is  
 without merit.”
- 23 • “Debtors believe that [this Court’s continued] assertion of *in rem* jurisdiction is without  
 24 basis in law, as determination of what is property of the Debtors’ estates are [sic] within  
 25 the exclusive core jurisdiction of [the Souther District of New York].”

26 At oral argument, Klestadt acknowledged that Debtors filed their chapter 11 cases to  
 27 “liquidate” the outstanding loans and the property held by the 14 SPE Debtors. Thus,  
 28 Respondents in bad faith contested the purported bases for venue to be transferred to

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<sup>4</sup> Windler filed that reply brief on behalf of Asset Resolution even though this Court’s  
 conversion of Debtors’ bankruptcy cases to chapter 7 cases had previously resulted in  
 Windler informing the Ninth Circuit that she was no longer counsel for Asset Resolution.



1 Nevada.

2 **c. Windler’s statements at the hearing of November 16, 2009**

3 At the hearing held in the 892 Case on November 16, 2009, in connection with the  
4 proposed allocation and disbursement of the funds being held in trust, Windler argued that  
5 no allocation could occur because all those funds belonged to Asset Resolution, as a debtor  
6 in possession:

7 MS WINDLER: Your Honor, this is Katherine Windler. I understand the Court’s  
8 ruling. I’d simply like to again point out that there is a dispute as to who is  
9 entitled to those funds. And it seems to me that this Court cannot make such an  
10 allocation at this time, because if it is determined that those funds are solely and  
11 exclusively the property of Asset Resolution, as a debtor in possession, and that  
12 the direct lender’s claims to those funds are not appropriately asserted—

13 THE COURT: You could only make that claim, Ms. Windler, if you allege—if you  
14 are making an allegation of fraud on your own behalf. In other words, you  
15 could—you have already stood in this court, and many times, and the other  
16 parties have, too, and you have acknowledged that you’re holding the bulk of  
17 those funds in trust. So, if you attempt to allege now, contrary to your  
18 representations to this Court, that they’re not held in trust, they’re owned wholly  
19 by Asset Resolution, you would be committing fraud, ma’am.

20 **d. Debtors’ responses to Movants’ motions for modification of the**  
21 **automatic stay, withdrawal of the reference, and for conversion**

22 Upon the transfer of the chapter 11 cases from the Southern District of New York to the  
23 District of Nevada, Debtors continued their efforts to deprive this Court of its ability to exercise  
24 in rem jurisdiction over the assets comprising Debtors’ estates. Specifically:

- 25 • Debtors initially opposed Movants’ motion to modify the automatic stay  
26 to enable the 892 Case to proceed except as to the parties’ damages  
27 claims, but then agreed, after this Court set a hearing on Movants’  
28 motions to withdraw the reference on shortened notice, to allow the entire  
892 Case to proceed to final judgment—if the enforcement of that final  
judgment was subject to further order by the Honorable Bruce A. Markell.
- Debtors consented to the withdrawal of the reference to the chapter 11  
cases in connection with the 892 Case, but opposed the withdrawal of  
the reference for the entirety of the chapter 11 cases, including Movants’  
motions to modify the stay and for conversion of the chapter 11 cases to  
chapter 7 cases.
- Debtors initially opposed Movants’ motion for conversion of the chapter  
11 cases to chapter 7 cases or, alternatively, for the appointment of a  
chapter 11 Trustee, but then on the day of the hearing agreed to the  
appointment of a chapter 11 Trustee “so long as the purpose of doing so

1 is to permit the loan servicing to be conducted within the confines of the  
2 chapter 11 process.

3 **e. Debtors' testimony at the hearing of December 14, 2009**

4 At the evidentiary hearing held before Judge Markell on December 14, 2009, in  
5 connection with Debtors' motion for interim debtor-in-possession financing, Hin-King Tai, the  
6 chief operating officer for Silar, which is the sole owner and manager of Asset Resolution,  
7 testified that Asset Resolution is merely a corporate shell with no employees, which is one of  
8 the reasons why Asset Resolution employs its affiliate Servicing Oversight Solutions, LLC  
9 ("SOS"):

10 A. . . . Asset Resolution is a foreclosure subsidiary. It has no employees. It is  
11 not an ongoing organization such as what you're familiar with with respect to  
12 having employees, technology, et cetera, et cetera. It is only a subsidiary. For  
13 it to engage in its, you know, services as to be a servicer and to have the rights  
14 for a contract for servicing, it would have to engage a subservicer to perform the  
15 servicing functions.

16 Q. And what is the name of the subservicer that has been engaged by Asset  
17 Resolution, LLC?

18 A. Servicing Oversight Solutions.

19 Mr. Tai also testified that Asset Resolution had paid pre-petition, and was seeking  
20 authorization to pay post-petition, its affiliate SOS a monthly servicing fee of 1.5% of the total  
21 unpaid principal balance of the remaining real estate loans and collateral—even if no  
22 servicing activity occurs. Based on that calculation, Asset Resolution paid approximately  
23 \$4.132 million in alleged servicing fees to SOS between July 24, 2009, and October 14, 2009  
24 (the petition date), and sought to make post-petition payments to SOS of approximately  
25 \$480,000 a month. Notably, Asset Resolution never sought authorization to retain SOS as  
26 its subservicer pursuant to 11 U.S.C. § 327.

27 Further, Pfrommer testified at that hearing that Asset Resolution intended to seek to  
28 encumber the direct lenders' fractional beneficial interests as security for Asset Resolution's  
debtor in possession financing request. Indeed, Mr. Tai acknowledged that, because the  
budget of \$7.5 million exceeded the \$4.5 million request for debtor in possession financing,  
the \$3 million shortfall would have to be made up by including additional collateral to secure  
such financing. Moreover, Debtors' debtor in possession financing request provided that the

1 proposed lender—another affiliate of Silar—would receive priority in Asset Resolution’s assets  
 2 pursuant to the terms of the debtor in possession financing agreement.

3 **E. The Court invites Movants to file a motion for sanctions.**

4 At a hearing held on January 19, 2010, the Court stated that it expected to see a motion  
 5 for sanctions:

6 [S]omebody counseled that the way to avoid this is to get the assets out of the  
 7 hands of the Federal District Court. Let’s put it into a chapter 11. That gets it  
 8 in front of another judge and of course as it works out now, that did not work. . . .  
 9 basically what Silar and Asset Resolution . . . are doing [is] exactly what I told  
 10 you not to do. Do not further rape or pillage. Do not violate your fiduciary duties  
 11 to the direct lenders. I expect to hold the principals of Asset Resolution and  
 12 Silar, the entities themselves and any attorneys or professionals who counseled  
 13 this frivolous—under Rule 11 of the Federal Rules of Civil Procedure, this  
 14 frivolous endeavor—I expect to hold you personally liable for the Rule 11  
 15 appropriate sanctions and I will expect to see those motions. . . . There is  
 16 nothing for Asset Resolution to properly reorganize. Asset Resolution was  
 17 devised from the outset as a shell entity to protect Silar from liability for holding  
 18 and preserving the value of these servicing rights. That’s what it was devised  
 19 for. It wasn’t—it didn’t predate this series of cases. It didn’t have an existing  
 20 business. It was devised solely for the purpose of holding these assets,  
 21 prosecuting them, increasing their value including the servicing rights and  
 22 protecting upstream Silar as the holder of the parent of Asset Resolution. That  
 23 was its purpose. There is nothing to reorganize and we all know that there are  
 24 extensive case and case authorities for similar attempts when the Court properly  
 25 identifies them as forum selection of forum avoidance procedures.

17 **II. LEGAL STANDARD**

18 The Court may impose and award sanctions at its discretion. See *Miller v. Cardinale*  
 19 (*In re DeVille*), 361 F.3d 539, 547 (9th Cir. 2004). Two bases for the imposition of sanctions  
 20 exist under these circumstances: (1) Rule 9011 of the Federal Rules of Bankruptcy Procedure,  
 21 and (2) the Court’s inherent power.<sup>5</sup>

22 **A. Rule 9011**

23 Rule 9011 empowers the Court to impose sanctions for conduct that is frivolous or  
 24 based on an improper purpose. See Fed. R. Bankr. P. 9011(b). Sanctions are warranted  
 25

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26 <sup>5</sup> Although 28 U.S.C. § 1927 permits the Court to impose sanctions against “[a]ny  
 27 attorney . . . who so multiplies the proceedings in any case unreasonably and vexatiously,”  
 28 it does not apply to bankruptcy courts because the Ninth Circuit does not deem a bankruptcy  
 court to be a “court of the United States” for purposes of section 1927. See *In re DeVille*, 361  
 F.3d at 546.

1 under Rule 9011 upon a showing of “objectively unreasonable conduct.” *In re DeVille*, 361  
2 F.3d at 548 (citation omitted). Rule 9011 contains a safe harbor provision that ordinarily  
3 requires a 21-day waiting period after service of the motion to permit the challenged action  
4 to be withdrawn or corrected. Fed. R. Bankr. P. 9011(c)(1)(A). But, “this limitation shall not  
5 apply if the conduct alleged is the filing of a petition in violation of subdivision (b).” *Id.*; see  
6 also *Dressler v. Seely Co. (In re Silberkraus)*, 336 F.3d 864, 868 (9th Cir. 2003) (“The clear  
7 import of this language is that the mandatory 21 day safe harbor rule does not apply to the  
8 filing of the initial petition.”).

9 Rule 9011(c) provides that, after notice and a reasonable opportunity to respond,  
10 sanctions are warranted in the event that “the court determines that subdivision (b) has been  
11 violated.” Rule 9011(b) requires attorneys to certify that, “after an inquiry reasonable under  
12 the circumstances,” a petition, among other things, “is not being presented for any improper  
13 purpose, such as to harass or to cause unnecessary delay or needless increase in the cost  
14 of litigation,” and is “warranted by existing law or by nonfrivolous argument for the extension,  
15 modification, or reversal of existing law or the establishment of new law.” In determining  
16 whether sanctions are warranted under Rule 9011(b), the Court “must consider both  
17 frivolousness *and* improper purpose on a sliding scale, where the more compelling the  
18 showing as to one element, the less decisive need be the showing as to the other.” *Marsch*  
19 *v. Marsch (In re Marsch)*, 36 F.3d 825, 830 (9th Cir. 1994). The Court is permitted to consider  
20 post-filing events “to infer the purpose of a filing from the consequences of a pleading or  
21 motion.” *In re Silberkraus*, 336 F.3d at 868 (internal quotations and citation omitted).; see also  
22 *In re Aston-Nev. Ltd. P’ship*, 391 B.R. 84, 103 (Bankr. D. Nev. 2006).

23 Rule 9011(c) authorizes the imposition of “an appropriate sanction upon the attorneys,  
24 law firms, or parties that have violated subdivision (b) or are responsible for the violation.”  
25 Pursuant to Rule 9011(c)(1)(A), such sanctions may include “the reasonable expenses and  
26 attorney’s fees incurred in presenting or opposing the motion,” and, “[a]bsent exceptional  
27 circumstances, a law firm shall be held jointly responsible for violations committed by its  
28 partners, associates, and employees.” The nature of the sanctions to be imposed for violation

1 of Rule 9011 “shall be limited to what is sufficient to deter repetition of such conduct or  
2 comparable conduct by others similarly situated.” Fed. R. Bankr. P. 9011(c)(2).

3 **B. Inherent power**

4 The Court has inherent power to sanction conduct that it specifically finds, by clear and  
5 convincing evidence, was undertaken in bad faith or is tantamount to bad faith. See *B.K.B.*  
6 *v. Maui Police Dep’t*, 276 F.3d 1091, 1107–08 (9th Cir. 2002); *In re Aston-Nev. Ltd. P’ship*,  
7 391 B.R. at 104. “[A] finding of bad faith ‘does not require that the legal and factual basis for  
8 the action prove totally frivolous; where a litigant is substantially motivated by vindictiveness,  
9 obduracy, or mala fides, the assertion of a colorable claim will not bar the assessment of  
10 attorney’s fees.’” *Fink v. Gomez*, 239 F.3d 989, 992 (9th Cir. 2001) (citation omitted). In sum

11 sanctions are available if the court specifically finds bad faith or conduct  
12 tantamount to bad faith. Sanctions are available for a variety of types of willful  
13 actions, including recklessness when combined with an additional factor such  
14 as frivolousness, harassment, or an improper purpose. . . . [A]n attorney’s  
reckless misstatements of law and fact, when coupled with an improper purpose,  
such as an attempt to influence or manipulate proceedings in one case in order  
to gain tactical advantage in another case, are sanctionable under a court’s  
inherent power.

15 *Id.* at 994. The Court has discretion “to fashion an appropriate sanction for conduct which  
16 abuses the judicial process.” *B.K.B.*, 276 F.3d at 1108 (quoting *Chambers v. NASCO, Inc.*,  
17 501 U.S. 32, 44–45 (1991)). In doing so, the Court “may, in its informed discretion, rely on  
18 inherent power rather than the federal rules or § 1927.” *Fink*, 239 F.3d at 994.

19 **III. ANALYSIS**

20 **A. Imposition of sanctions is warranted against Respondents.**

21 Sanctions are warranted against Respondents pursuant to both Rule 9011 and the  
22 Court’s inherent power because the filing and prosecution of Debtors’ chapter 11 cases were  
23 for improper purposes and were frivolous. In particular, Respondents should be sanctioned  
24 because they caused Debtors to engage in improper forum shopping solely in an attempt to  
25 evade this Court’s jurisdiction and adverse rulings and to unnecessarily delay the proceedings  
26 in the 892 Case. Respondents did so to further Silar’s continued objective of improperly  
27 enriching itself to the financial detriment of the direct lenders. it is well established that  
28

1 sanctions may be imposed pursuant to Rule 9011 or the Court's inherent power, when it is  
2 found that a party has engaged in such improper conduct. *See, e.g., In re Silberkraus*, 336  
3 F.3d at 870–71 (affirming the imposition of sanctions under Rule 9011 based on debtor's  
4 "improper motive of forum shopping" to stay a pending state court action); *In re Alston-Nev.*  
5 *Ltd. P'ship*, 391 B.R. at 101 ("Filing a bankruptcy petition to evade . . . legitimate state court  
6 actions is a classic example of improper purpose, as well as of bad faith."); *see also In re*  
7 *Heritage Wood 'N Lakes Estates, Inc.*, 73 B.R. 511, 514 (Bankr. M.D. Fla. 1987) (debtor filed  
8 chapter 11 case in bad faith to engage in forum shopping because "it was not going to get the  
9 best side of the coin in the state court and looked to go elsewhere to have a new bite at the  
10 apple.").

11 Specifically, prior to the commencement of Debtors' chapter 11 cases, Silar and Asset  
12 Resolution first sought to evade this Court's jurisdiction by moving to dismiss the 892 Case  
13 for lack of subject matter jurisdiction, and by filing their Nevada state court case—which  
14 included some of the same claims that were already pending in the 892 Case—against nearly  
15 all the direct lenders. Those efforts, however, were unsuccessful. As a result, Debtors  
16 commenced their chapter 11 cases in the Southern District of New York. Those filings were  
17 approximately:

- 18 • six weeks after this Court approved a servicing fee of only \$94,000 in  
19 connection with the sale of the Gess Property;
- 20 • four weeks after Movants removed, and moved to dismiss, the Nevada  
21 state court action;
- 22 • four weeks after this Court entered its summary judgment order;
- 23 • one week after this Court denied Silar's and Asset Resolution's motion  
24 to dismiss the 892 Case for lack of subject matter jurisdiction; and
- six weeks prior to this Court's scheduled bench trial regarding the  
termination issue.

25 Those facts demonstrate that Respondents caused Debtors to commence their chapter  
26 11 cases in New York in bad faith. Debtors' chapter 11 cases were not commenced in an  
27 effort to reorganize existing businesses under the protection of the Bankruptcy Code, *see In*  
28 *re Alston-Nev. Ltd. P'ship*, 391 B.R. at 100–01, but rather to deprive this Court of its ability to



1 continue to exercise jurisdiction over, and render rulings regarding, Debtors and their  
 2 purported assets, see *In re Silberkraus*, 336 F.3d at 868; *In re Alston-Nev. Ltd. P'ship*, 391  
 3 B.R. at 103; *In re Heritage Wood 'N Lakes Estates, Inc.*, 73 B.R. at 514. Respondents' own  
 4 contentions in connection with the filing of the chapter 11 cases demonstrate as much:

- 5 • In Debtors' Rule 1007 Affidavit, Pfrommer attested that the Bankruptcy  
 6 Court, rather than this Court, would decide whether Asset Resolution: (1)  
 7 was entitled to all the funds being held in trust for the direct lenders as  
 8 servicing compensation, and (2) would be terminated as the loan servicer  
 9 under the LSAs. Thus, from the outset of Debtors' chapter 11 cases,  
 10 Respondents intended that the New York court would resolve what  
 11 property comprised Debtors' estates.
- 12 • Similarly, two days after the filing of the chapter 11 cases, Windler  
 13 argued in the 892 Case that this Court no longer had in rem jurisdiction  
 14 over the funds being held in trust by Asset Resolution for direct lenders,  
 15 and ten days thereafter Pfrommer attested that this Court's continued  
 16 exercise of in rem jurisdiction precluded Asset Resolution from seeking  
 17 the approval of the Bankruptcy Court to sell certain real estate collateral.  
 18 Thus, notwithstanding the Court's preliminary injunction, Respondents  
 19 sought to transfer jurisdiction and control over such assets to the New  
 20 York court.
- 21 • Debtors sought to obtain financing to pay a servicing fee to SOS—a Silar  
 22 affiliate—that was millions of dollars in excess of what this Court had  
 23 approved in the 892 Case. That request plainly sought to eviscerate this  
 24 Court's prior servicing fee rulings.

25 Moreover, in contesting the transfer of venue to the District of Nevada, Debtors denied  
 26 the ability of this Court to administer the chapter 11 cases as well as to proceed with the 892  
 27 Case. Specifically, Debtors denied both the significance of this Court having presided over  
 28 the 892 Case for several years, as well as the relevancy and importance of the Confirmation  
 Order, APA, and the preliminary injunction to the determination of whether the District of  
 Nevada should decide what property comprises Debtors' estates. Debtors plainly did so to  
 further the improper purpose of depriving this Court of jurisdiction notwithstanding:

- The Southern District of New York's prior decision concluding that the  
 existence of the APA and the preliminary injunction required the transfer  
 of litigation between Compass and Pathfinder to the District of Nevada.  
 See *CCM Pathfinder Pompano Bay, LLC v. Compass Fin. Partners LLC*,  
 396 B.R. 602, 606 (S.D.N.Y. 2008).<sup>6</sup>

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<sup>6</sup> The Bankruptcy Court for the Southern District of New York recognized that the  
 resolution of the 892 Cases was a prerequisite to being able to administer Debtors' estates.

- 1 • The Adversary proceeding against USACM that Bryan Cave filed on  
2 behalf of Silar and Asset Resolution—only one week prior to the filing of  
3 the chapter 11 cases—in which they alleged that jurisdiction and venue  
4 were proper in the District of Nevada.
- 5 • Silar’s and Asset Resolution’s prior acknowledgment that, pursuant to the  
6 preliminary injunction, the funds being held in trust for the direct lenders  
7 would not be disbursed without further order of this Court.

8 Thus, Debtors’ response to the motion to transfer venue reveals that the filing of the chapter  
9 11 cases was based on the improper purpose of evading this Court’s jurisdiction.

10 Finally, Debtors’ response to the motion to transfer venue was filed by Klestadt and  
11 supported by affidavits from Gracin and Pfrommer—all of which demonstrate that Silar, Leeds,  
12 Gracin, Pfrommer, and Klestadt were involved in, and responsible for, the decision to file the  
13 chapter 11 cases in an improper attempt to evade the jurisdiction and adverse ruling of this  
14 Court. In fact, Klestadt was paid \$300,000 retainer five days prior to the filing of the chapter  
15 11 cases. Pfrommer was retained by Asset Resolution in early August 2009, and participated  
16 with Leeds and Gracin in the decision to commence the chapter 11 cases. Bryan Cave also  
17 participated in the decision to file the chapter 11 cases, as it was paid a \$300,000 retainer  
18 more than two weeks prior to their filing, and Windler stated at the hearing held on December  
19 14, 2009, that she prepared Debtors’ schedules and statements of financial affairs. Thus,  
20 Respondents intentionally caused Debtors to engage in improper conduct to deprive this  
21 Court of jurisdiction over Debtors and their assets.

22 The filing of the chapter 11 cases was also frivolous because Debtors never had any  
23 intention or ability to reorganize. *See In re Alston-Nev. Ltd. P’ship*, 391 B.R. at 100–01  
24 (holding debtor “had no good reason to file chapter 11 bankruptcy” because it had no  
25 employees and no intention or ability to reorganize); *see also Loop Corp. v. U.S. Trustee*, 379  
26 F.3d 511, 516 (8th Cir. 2004) (“Because the debtors here intended to liquidate their assets  
27 rather than restore their business operations, they had no reasonable likelihood of  
28 rehabilitation.”). It is not disputed that the purpose of the 14 SPE Debtors is merely to hold  
segregated property in trust for the direct lenders. Nor is it disputed that Asset Resolution is  
merely a corporate shell with no employees. Thus, Debtors necessarily lacked any intention



1 or ability to reorganize an existing business.

2 Respondents make essentially five arguments that the filing of the chapter 11 cases  
3 was not for an improper purpose. First, they argue that they filed the chapter 11 cases for the  
4 proper purpose of using bankruptcy procedure—specifically nationwide in rem jurisdiction and  
5 service—to finally resolve the matter in a way that could not be done in the 892 Case due to  
6 the impracticality of joinder of all necessary parties. Second, they argue that the chapter 11  
7 cases were filed for the proper purpose of avoiding tax foreclosures and deterioration of the  
8 properties due to lack of maintenance—purposes this Court approved of when pursued by the  
9 chapter 7 trustee. Third, they argue that even if they lacked an intent or ability to reorganize,  
10 that a chapter 11 case may be properly filed to conduct pre-plan and plan-based sales of  
11 substantially all assets of the estate. Fourth, they argue that venue was proper in the  
12 Southern District on New York and improper in the District of Nevada. Fifth, they argue that  
13 their actions could not deprive this Court of jurisdiction because it did not have in rem  
14 jurisdiction and jurisdiction over the 14 SPE Debtors until their Southern District of New York  
15 case was transferred to Nevada and because the results of the bankruptcy filings were in line  
16 with the Court's orders.

17 Movants correctly point out that they do not argue that venue was improper in the  
18 Southern District of New York or that there was no advantage to the procedures a bankruptcy  
19 court could offer. Instead, Movants assert that Respondents' filings were frivolous because  
20 they had no intent or ability to reorganize and because they were made for the purpose of  
21 evading this Court's jurisdiction over Asset Resolution and the loan servicing rights. The  
22 circumstances of the case establish that Respondents acted with the improper purpose to strip  
23 the Court of its in rem jurisdiction over the loan originated by USCAM, the collateral securing  
24 the loans, and the LSAs. The Court had held that it had jurisdiction over the loan servicing  
25 rights under the LSAs even if not all interested parties were joined in the 892 Case.

26 Despite Respondents' contention, the Court had jurisdiction over the SPE Debtors  
27 because they were created and held title in trust for the direct lenders pursuant to this Court's  
28 preliminary injunction. Moreover, the Court always had in personam jurisdiction over

1 Compass and Asset Resolution which were the managing members of the 14 SPE Debtors.

2 Respondents were not insolvent when they filed the chapter 11 cases. Pfrommer had  
3 stated as much in her Rule 1007 Affidavit filed on October 14, 2009, and Asset Resolution  
4 was able to pay Silar's affiliate, SOS, millions of dollars before filing the petitions.  
5 Furthermore, if Respondents sought only the benefits of bankruptcy court, they would not have  
6 opposed transfer of the bankruptcy cases to the District of Nevada. They also could have  
7 agreed to terminate the automatic stay with respect to the 892 Case if they were not seeking  
8 to evade this Court's jurisdiction and adverse rulings.

9 Though chapter 11 allows for liquidation, it contemplates liquidation to facilitate  
10 reorganization. See *I.R.S. v. Creditors Comm. (In re Deer Park, Inc.)*, 10 F.3d 1478, 1482 (9th  
11 Cir. 1993) ("It does not matter that the Chapter 11 reorganization plan is a liquidating plan, so  
12 long as the allocation of trust fund tax payments is necessary to the success of the  
13 reorganization."). Because Asset Resolution was a shell corporation and Respondents did  
14 not seek reorganization, their filing was improper and sanctionable. See *St. Paul Self Storage*  
15 *Ltd. P'ship v. Port Auth. (In re St. Paul Self Storage Ltd. P'ship)*, 185 B.R. 580, 583 (B.A.P.  
16 9th Cir. 1995) (holding that bankruptcy court's finding of bad faith was not clearly erroneous  
17 when the debtor had conducted no business for years and the court had found its "purpose  
18 in filing its petition was not to effectuate a reorganization of its business, but was a litigation  
19 tactic.").

20 Respondents also argue that the Court may not award monetary sanctions against  
21 Silar, Leeds, and Gracin because Movants have produced no evidence that they were  
22 responsible for filing the petitions and no monetary sanctions may issue against a represented  
23 party based on legal decisions. But, the record shows that Klestadt had numerous  
24 discussions with Silar, Leeds, and Gracin before commencing the chapter 11 cases and that  
25 Klestadt and Brian Cave advised Silar, Leeds, and Gracin in connection to the  
26 commencement of the chapter 11 cases. Silar, Leeds, and Gracin were involved with the  
27 decision to file the chapter 11 petitions and are thus responsible parties that may be subject  
28 to monetary sanctions.

1 **B. Sanctions may include reimbursement of attorneys' fees and costs and**  
2 **disgorgement of retainers incurred in connection with opposing Respondents'**  
3 **wrongful conduct.**

4 Respondents argue that dismissal, rather than monetary sanctions, is appropriate.  
5 They also argue that payment of Movants' attorneys' fees is improper because sanctions are  
6 not meant to be compensatory and that even if compensatory damages in the form of  
7 attorneys' fees are warranted, the Court may not impose both disgorgement and  
8 compensatory damages in the form of attorneys' fees. They further argue that the filing of the  
9 chapter 11 petitions caused no harm—and in fact helped—Movants. Finally, they note that,  
10 under Rule 9011, they may only be sanctioned for filing the petitions, not other actions,  
11 because Movants did not comply with Rule 9011's safe harbor provision.<sup>7</sup>

12 Movants have incurred substantial attorneys' fees as a result of Respondents' filing of  
13 the chapter 11 cases. They have had to: (1) litigate a motion to transfer venue to the District  
14 of Nevada; (2) challenge Debtors' efforts to keep matters before Judge Markell and encumber  
15 the direct lenders' loan interests; (3) oppose Silar's and Bryan Cave's attempt to stay the 892  
16 Case and the converted chapter 11 cases pending appeal in the Ninth Circuit. Furthermore,  
17 Respondents' filing of the chapter 11 cases delayed the Court's entry of an order terminating  
18 Compass and Asset Resolution's servicing rights and its order approving disbursement of \$10  
19 million held in trust for the direct lenders. This has limited the direct lenders' ability to protect  
20 their remaining loans and foreclosure properties. Therefore, Movants were harmed by  
21 Respondents' bad-faith filings.

22 Respondents argue that the Court may only award sanctions to Movants, not their  
23 attorneys directly. Rule 9011 only authorizes payment of sanctions to the court or to movants.  
24 Fed. R. Bankr. P. 9011. Therefore, it is inappropriate to award sanctions directly to Movants'  
25 attorneys. Klestadt argues that sanctions should be limited to costs to litigate a single motion  
26 to dismiss that could have disposed of Respondents' filings. Keeping in mind that sanctions

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27  
28 <sup>7</sup> Silar, Pfrommer, Leeds, and Gracin also request that the Court charge Movants with  
the costs of their defense.

1 should deter future misconduct, the Court finds that a broader measure of sanctions is  
2 warranted.

3 **C. A sanction of \$279,615.47 based on Movants' attorneys' fees and expenses as**  
4 **well as disgorgement by Bryan Cave and Klestadt of their retainers is appropriate**  
5 **to deter future misconduct.**

6 The Court now proceeds to calculate an appropriate sanction. The sanction must be  
7 sufficient to deter future conduct and may be compensatory, including attorney' fees. Movants  
8 ask the Court to award sanctions, jointly and severally, against Silar, Leeds, Gracin,  
9 Pfrommer, Klestadt, Windler, and Bryan Cave. Movants incurred \$66,184.71 in attorneys'  
10 fees and expenses for representation by Jones Vargas from October through December 2009.  
11 These fees and expenses were incurred as a result of: (1) filing chapter 11 cases in the  
12 Southern District of New York; (2) changing venue; (3) opposing and obtaining interim orders;  
13 (4) opposing proposed reorganization; (5) moving for withdrawal of reference; (6) moving for  
14 conversion to chapter 7; and (7) moving for sanctions. (Chubb Decl. (#740) ¶¶ 2–3). Jones  
15 Vargas' spent approximately 230 hours on these matters and the billing rates for its attorneys  
16 ranged from \$170 to \$420 per hour. (*Id.* at Exs. 1–7). In total, Jones Vargas accrued  
17 \$65,304.50 in attorneys' fees. (*Id.* at ¶ 3). Jones Vargas also incurred \$880.21 in expenses.  
18 (*Id.*). The Court finds that Jones Vargas' billing rates are reasonable and \$66,184.71 as a  
19 sanction based on their attorneys' fees and expenses is appropriate to deter future  
20 misconduct.

21 McAlan Duncan represents Movants on a contingency basis. He estimates the value  
22 of his work done related to the chapter 11 cases from October 14, 2009 through April 8, 2010  
23 to oppose the commencement and prosecution of the chapter 11 cases to be \$50,685.40.  
24 (Duncan Decl. (#741) ¶ 2). Duncan spent 124.3 hours on opposing the bankruptcy cases and  
25 has proposed a billing rate of \$400 per hour. (*Id.* at ¶ 3). He also spent \$965.40 in travel  
26 expenses. (*Id.* at ¶ 4). The Court finds that Duncan's proposed billing rate is reasonable and  
27 \$50,685.40 as a sanction based on his attorney's fees and expenses is appropriate to deter  
28 future misconduct.

1 Respondents argue that the Court should not sanction any amount based on Duncan's  
2 work resulting from Respondents' filings because Duncan did not make an appearance in the  
3 bankruptcy case and because he worked as Certain Direct Lender's agent to deal with Bickel  
4 & Brewer. Respondents cite to no authority suggesting that this is improper. The purpose of  
5 Rule 9011 sanctions is to deter future misconduct. One way to do this is to make the party  
6 violating the rule bear the costs of its violation. Whether or not Duncan made an appearance  
7 and whatever his relationship to Certain Direct Lenders was, his activity as a result of  
8 Respondents' filings resulted in costs that Respondents should bear.

9 Gracin, Leeds, Pfrommer, and Silar also argue that Duncan's fees should not be  
10 included because the Court enjoined Cross, for which Duncan is the principal, from acting on  
11 behalf of any Direct Lender in the 892 Litigation. The Court did not order Duncan not to  
12 participate in or respond to Respondents' bankruptcy filings in the Southern District of New  
13 York. Furthermore, the Court approved Duncan's appearances as a practicing lawyer as long  
14 as he did not act on behalf of Cross. Though Duncan's involvement with Cross, and later with  
15 Granite Redevelopment, may be questionable, it does not tip the balance of equities against  
16 awarding sanctions based on Duncan's attorney's fees and costs to respond to Respondents'  
17 bankruptcy petition.

18 Bickel & Brewer also represent Movants on a contingency basis. It estimates the value  
19 of its attorneys' work and expenses to oppose the chapter 11 cases and to seek sanctions to  
20 be \$287,688.96. (Collins Decl. (#743) ¶¶ 7–8). All together, the attorneys at Bickel & Brewer  
21 spent 508.1 hours on: the motion to transfer venue; the bankruptcy cases; the motions to  
22 terminate automatic stay, for withdrawal of reference, and for conversion; and the motion for  
23 sanctions. (*Id.*). Bickel & Brewer proposes billing rates ranging from \$275 per hour to \$775  
24 per hour to calculate fees for sanctions, resulting in a total of \$269,980.00 in attorneys' fees.  
25 (*Id.* at ¶ 8). Bickel & Brewer also spent \$17,232.16 in expenses for travel, lodging, meals,  
26 transportation, telephonic hearings, filing fees, transcript fees, and legal research fees. (*Id.*  
27 at ¶ 12). Bryan Cave and Windler argue that these fees are unreasonable because they  
28 exceed the prevailing hourly rates in Nevada. The prevailing market used to determine

1 reasonable attorney's fees is the district where the matter is heard. *See Gates v. Deukmejian*,  
2 987 F.2d 1392, 1405 (9th Cir. 1992). The Court finds that Bickel & Brewer's proposed billing  
3 rates are unreasonably high when compared to prevailing rates in Nevada and the rates  
4 actually used by Jones Vargas and proposed by Duncan. After making reasonable downward  
5 adjustments on the billing rates, the Court finds that \$136,280.00 is a reasonable sanction  
6 based on Bickel & Brewer's attorneys' fees. Adding expenses, Bickel & Brewer's expenses  
7 shall contribute \$153,512.16 to the sanction award. This sanction is appropriate to deter  
8 future misconduct.

9 Klestadt, Bryan Cave, and Windler argue that it is inappropriate to award a sanction  
10 of attorneys' fees when Duncan and Bickel & Brewer represented Movants under contingency  
11 fee arrangements. Respondents focus on the fact that Duncan and Bickel & Brewer will  
12 recover a percentage of Movants' total recovery if Movants are deemed successful. But, this  
13 ignores the purpose of Rule 9011 sanctions. Sanctions for reasonable attorneys' fees are  
14 necessary to deter future misconduct by Respondents. Just because Movants did not pay  
15 Duncan and Bickel & Brewer for their work in response to Respondents' filings does not mean  
16 that Duncan and Bickel & Brewer's work was not a cost. Respondents should bear that cost  
17 to deter future misconduct. Furthermore, contrary to Respondent's assertions, there is little  
18 danger of a windfall to Duncan and Bickel & Brewer because, as Klestadt themselves point  
19 out, the sanctions award is payable to Movants, not their attorneys.

20 Dona Cangelosi and other direct lenders were represented by Lisa A. Rasmussen and  
21 William A. Cohan. (Rasmussen Decl. (#746) ¶ 21). Rasmussen spent 22.7 hours on matters  
22 directly related to Respondents filing of the chapter 11 cases in the Southern District of New  
23 York. (*Id.* at ¶ 12). She bills at \$300.00 per hour. (*Id.* at ¶ 13). Cohan spent 4.7 hours and  
24 bills at \$700.00 per hour. (*Id.* at ¶¶ 16–17). Rasmussen also spent \$73.20 on PACER fees.  
25 (*Id.* at ¶ 20). In total, Rasmussen and Cohan assert \$10,173.20 in attorneys' fees and  
26 expenses. (*Id.* at ¶ 21). The Court finds that Rasmussen's stated attorney's fees and  
27 expenses are reasonable and necessary to a sanction that will deter future misconduct. But,  
28 the Court finds that calculating attorneys' fees using a billing rate of \$700 is unnecessary to

1 deter future misconduct. Employing a lower rate for Cohan’s attorney’s fees, the Court finds  
2 that \$9,233.20 is a reasonable sanction to deter future misconduct based on Rasmussen and  
3 Cohan’s attorneys’ fees and expenses.

4 Respondents argue that the Court should not sanction any amount based on  
5 Rasmussen’s work resulting from Respondents’ filings because Rasmussen did not make an  
6 appearance in the bankruptcy case. Respondents cite to no authority suggesting that this is  
7 improper. The purpose of Rule 9011 sanctions is to deter future misconduct. Whether or not  
8 Rasmussen made an appearance, her activity as a result of Respondents’ filings resulted in  
9 costs that Respondents should bear to create the necessary deterrent effect. This includes  
10 costs resulting from the filing, even if incurred after venue was transferred back to Nevada.

11 In sum, the Court awards sanctions against Respondents of \$279,615.47.  
12 Respondents are jointly and severally liable for this amount. Bryan Cave and Klestadt also  
13 received \$300,000 each as retainers to file and litigate the chapter 11 cases. To the extent  
14 that Bryan Cave and Klestadt have retained these retainers or applied them to their incomes,  
15 they must disgorge their retainers—whether used or unused—to deter future misconduct.  
16 Bryan Cave and Klestadt should not profit from their sanctionable conduct. Therefore, the  
17 Court orders Bryan Cave and Klestadt to each disgorge their \$300,000 retainers to the  
18 chapter 7 Trustee. The amount that Bryan Cave and Klestadt must disgorge is reduced by  
19 the amount of the unused retainers they have already returned.

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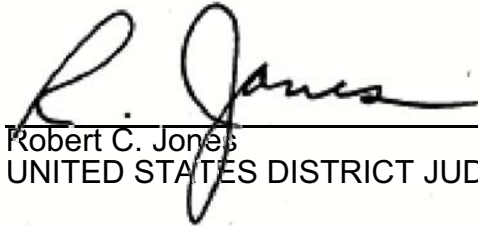
**IV. CONCLUSION**

Accordingly, IT IS ORDERED that Certain Direct Lenders' Motion for the Imposition of Sanctions (#392) is GRANTED.

IT IS FURTHER ORDERED that Respondents are jointly and severally sanctioned in the amount of \$279,615.47 to be paid to Movants.

IT IS FURTHER ORDERED that Bryan Cave and Klestadt shall each disgorge all unreturned portions of their \$300,000 retainers—whether used or unused—to the chapter 7 Trustee.

DATED: This 24<sup>TH</sup> day of May, 2010.

  
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Robert C. Jones  
UNITED STATES DISTRICT JUDGE