

# Daily Journal

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## TOP VERDICTS OF 2016

The largest and most significant verdicts and appellate reversals handed down in California in 2016

### TOP DEFENSE VERDICTS

# Von Saher v. Norton Simon Museum of Art at Pasadena

#### CASE INFO

#### Art restitution

Central District

U.S. District Judge John F. Walter

**Defense lawyers:** Munger, Tolles & Olson LLP, Luis Li, Ronald L. Olson, Fred A. Rowley Jr., E. Martin Estrada, Eric P. Tuttle, Justin P. Raphael, Kuruvilla J. Olasa, Mark R. Yohalem, Matthew A. MacDonald

**Plaintiff lawyers:** Herrick Feinstein LLP, Lawrence M. Kaye, Howard N. Spiegler, Darlene Fairman, Frank K. Lord IV, Gartenberg Gelfand Hayton LLP, Edward Gartenberg

That tangled background led to Munger, Tolles & Olson LLP's detailed investigation of original Dutch and Allied Forces government records, few of them in English. "It's fascinating material," lead counsel Luis Li said. "The claim aroused some natural sympathies, but the important thing to do was to put forward the actual facts of how postwar Dutch restitution law functioned. It's hard, because there are no secondary sources available. You have to go to the original memos. Once you learn how the system worked, it's a vastly different story."

Li said that Munger Tolles lawyers became authorities on the intricacies of Allied and Dutch postwar restitution schemes. They worked closely with experts to research and then explain in detail how the schemes were designed and carried out, including the interplay between restitution to individual victims and reparations to nations through expropriation of unclaimed enemy property.

Before the trial judge granted summary judgment to the defense, ruling that the Dutch government became the owner of the paintings under Dutch law, and that its successor, the museum, was their rightful owner now, the case made two trips to the 9th U.S. Circuit Court of Appeal and the U.S. Supreme Court. Li and colleagues successfully challenged on constitutional grounds a California statute that had revived otherwise time-barred claims for Holocaust art, making new law on foreign affairs preemption.



LUIS LI

"These cases are pretty rare," Li said. "Few get litigated. Most museum boards want to settle matters that deserve to be settled. Here, both legally and morally, at bottom the claimant's family was not the current owner."

When he began the case, Li added, "I didn't really like those old dark panel paintings. Now, I can't get enough of them, even though they're so untrendy. And by now, I feel like we could get a Ph.D. in postwar Dutch restitution law."

— John Roemer

**M**arei von Saher sought to recover a pair of 16th century oil paintings titled "Adam" and "Eve" by German Renaissance master Lucas Cranach the Elder, taken by the Nazi Herman Goring during World War II from von Saher's father-in-law, a Dutch Jewish art dealer, in a forced sale. The Norton Simon Museum of Art at Pasadena got them 45 years ago from the descendant of Russian aristocrats who obtained them from the Dutch government after claiming they had been wrongfully taken from his family by the Soviet Union in the 1920s.