

**20-1566 CASSIRER V. THYSSEN-BORNEMISZA FOUNDATION**

DECISION BELOW: 824 Fed.Appx. 452

LOWER COURT CASE NUMBER: 19-55616

**QUESTION PRESENTED:**

The Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1602–1611 (“FSIA”), provides that where a foreign nation is not immune from jurisdiction in the courts of the United States or of any State, it “shall be liable in the same manner and to the same extent as a private individual under like circumstances.” *Id.* § 1606. In four circuits, the courts of appeals have held that this statutory requirement of parity with private litigation means that a federal court hearing an FSIA case must apply the choice-of-law rules of the State in which it is sitting. But the Ninth Circuit has held—repeatedly and without meaningful analysis, including in the decision below—that choice of law in FSIA cases is determined by application of federal common law.

The choice of law issue is critical in this case, in which the family of a Holocaust survivor seeks the return of a painting stolen by the Nazis. Under California law, a holder of stolen property (such as the Spanish state museum here) can never acquire good title, while under Spanish law, an adverse possession rule protects the museum’s title.

The question presented is:

Whether a federal court hearing state law claims brought under the FSIA must apply the forum state’s choice-of-law rules to determine what substantive law governs the claims at issue, or whether it may apply federal common law.

CERT. GRANTED 9/30/2021