

The Art Market Adjusts: Insurance implications for fine art collectors and exhibitions

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In these uncertain times, the Withers Art Team remains optimistic but pragmatic. A variety of questions are coming our way, and we have put together a series of Q&As to provide you insights from our partners, colleagues, and industry experts to assist you in understanding the impact to the art industry in this uncharted territory.

We begin this series with a conversation with Mary Pontillo, Senior Vice President National Fine Art Practice Leader of DeWitt Stern Fine Art, addressing several measures to consider with regard to protecting your art and your art business.

With continued support and best regards,

Diana Wierbicki
Global Head of Art Law

Diana: Mary, to start, we have been hearing the insurance term “business interruption loss” being discussed given the current situation. Is that term applicable to what is going on now as a consequence of the virus?

Mary: Yes and possibly no. People are definitely experiencing an interruption in their businesses; however, in our experience, the Business Owners or Package policies will likely not respond because there needs to be a “physical loss or damage” claim to trigger business interruption. The virus is not causing a physical loss or damage to peoples’ space, thus the policy will likely not respond. Every claim has its own distinct circumstances and we are encouraging our clients to submit claims so the insurance companies can make a determination based on the specific details of each loss.

In addition, the landscape shifts daily. There is some movement on the legislative side to create “...a federal guarantee of payments by insurers for business interruption claims irrespective of viral exclusions.” We will absolutely stay up to date on this legislation and will let our clients know when this is finalized and how it affects them.

Diana: With regard to fine art insurance, you and I discussed considerations related to existing exhibition loan agreements and consignment agreements. Why is it important for the parties of those agreements to review those contract terms now?

Mary: Yes, you and I discussed that contract terms vary with regard to insurance coverage provisions and that some contracts tie the duration of insurance coverage to specific dates rather than to a general date of return. If coverage dates need to be extended, you should obtain an amended agreement and updated Certificate of Insurance.

Also, take a look at how long the items will now be at the location. Is the location coastal? Will the items be there through hurricane season (begins June 1st)? Ask the museum to confirm that they have full wind/hurricane/flood coverage and ensure your loan agreement stipulates that the museum is responsible for any deductibles. If you don’t feel comfortable with your item being there through hurricane season, you might want to look into ways to get the work back and/or ask the museum for a full details regarding how the works will be protected from hurricanes.

Diana: With regard to exhibition loan agreements specifically, what do the collectors and museums need to keep in mind with regard to increased policy limits that are tied to exhibitions?

Mary: From an insurance policy limits standpoint, say your painting on loan is part of a high-valued exhibition for which a museum had to increase their insurance limits. You’ll want to check in with the museum to ensure that a new Certificate of Insurance is issued for the new term and confirm

that they continue to have adequate limits for all artwork on loan to them.

Diana: We have been hearing a lot lately about companies telling their employees not to come into work. In the art industry this has caused certain fine art storage facilities to create modified security measures. Do collectors need to worry that any of these modified security measures in warehouses, or even galleries or museums, that might affect their fine art insurance coverage?

Mary: We have many fine art warehouses as clients and all of them have the ability to monitor their cameras and alarms remotely. Luckily New York State included warehouses on their list of “Essential Employees” so most warehouses will be able to send someone there each day to do a “wellness check” on the building. They will ensure all systems are operating and if there are any problems, luckily “skilled trades such as electricians, plumbers...other related...professionals for essential infrastructure or for emergency repair...” are also part of the “Essential Employees” list in the State of New York. Also keep in mind that the police and/or the fire department respond to the various alarms connected to art storage warehouses. All of these factors give me comfort that warehouses and the art within them will be very safe. Galleries and museums, for the most part, will be following similar protocols. I think it is appropriate to ask these questions of anyone holding onto your artwork right now. They will be prepared to answer questions of this nature during this unusual time.

Diana: Are there any other issues that you think art businesses need to protect themselves against in the current climate?

Mary: Hackers are using this vulnerable moment to ramp up targeting people through Ransomware attacks and phishing emails. In the middle of figuring out our “new temporary normal” the last thing any of us want to deal with is a data security incident. I want people to ensure they are covered for Cyber losses and have the resources to lean on should this happen.

Also, many people are relying solely on Wire Transfers for payment. You should go analogue and pick up the phone to confirm wire transfer information with the other party before releasing wired funds in order to avoid a wire transfer fraud situation.

Follow the link to view other Q&As in our [The Art Market Adjusts Q&A Series](#).

[Click here](#) to read more insights on how we can weather the coronavirus outbreak with you.

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