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LOAN TRANSACTIONS & INSURANCE: HOW DOCUMENTS CAN HELP OR HINDER A CLAIM INSURANCE JEOPARDY

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Keep On Truckin

All Risk Fine Art Coverage for Transit is the coverage that applies to artwork once packed for shipment but still at the museum prior to departure.

Even if there is negligence on the part of the trucker, a Released Value Bill of Lading relieves liability, but only if the document is signed by the shipper.

A Waiver of Subrogation, or Hold Harmless Agreement issued by the insurance company, reduces the ability of an insurance company from suing the shipper, packer, warehouse or auction house even if they are negligent in damaging or causing a loss to a work of art.

Bad/severe weather on the open sea to save the voyage & vessel is the condition where some property on a vessel is saved but other cargo is jettisoned. When a General Average loss settlement is used all cargo owners on that voyage share in the loss.

In the event of an accident at the port the Extra Expense provision of an Ocean Marine insurance policy pays for up-righting of the truck and trailer, putting the sculpture back on the flat bed and any port costs/penalties that are levied.

You Break It Who Buys It?

All Risk of Physical Loss or Damage, is the coverage that pays when artwork simply falls off its plinth and breaks into pieces.

A Pairs and Sets clause is an insurance loss settlement provision that will cover a pair of Ming vases, antique earrings, or other art part of a pair or set, taking into consideration the full value of the pair or set.

The Valuation in the Event of Loss Clause is an important clause in every insurance policy. It tells you what your payment will be based on.

When artwork is damaged you would rather have "Current Market Value or Agreed Value", which ever valuation is greater. This will ensure you get top dollar for your claim settlement. This helps in a fluctuating market.

Some collectors who are lending their art may require an "Any loss is a total loss" Clause to guarantee they don't get back a restored piece, however this is not usually offered by insurers.

How Complete is Your Loan Form?

Insurers turn to the Loan Agreement or Consignment Agreement, when there is a fine art loss between two parties. This document should be the road map that spells out who is responsible for various aspects of the loan such as, packing, transport, display/exhibition, reproduction rights, etc.

The Jointly Owned Property Clause, partially insures artwork if jointly owned with others. A Loan or Consignment Agreement should determine who is



responsible regardless of ownership percentage, so the insurance policy of the person/institution who has possession will respond to a claim using the full value of the art.

A loss adjustment process that is longer than necessary can arise when there is no agreement in force between the lender and borrower, which may cause undue confusion.

The Other Insurance Clause in an insurance policy comes into play when two insurance companies insure the same artwork. This can cause a delay in how the claim will be settled.

Terrorism insurance needs to be asked for specifically post 9/11. TRIPRA vs. Full Terrorism

See You in Court

Few Fine Art dealers buy Media Liability to provide coverage for copyright suits because they don't create artwork. Their artists should think about this coverage, as well as the dealer since there have been lawsuits related to copyright involving dealers and artists.

An Object Condition Report is a good document to have completed both prior to packing and after unpacking once delivered. This will help determine the condition at a point in time.

Rights under VARA (Visual Artists Rights Act), covers instances where a work of art is damaged and the artist rejects the work, rendering the work a total loss.

The dealer or museum can be held liable for copyright infringement in a Media Liability E&O claim if there is a suit alleging unfair use.

A Released Value Bill of Lading which is protected by the Geneva Convention allows a warehouse or trucker to limit its liability to \$.60 per pound. The Bill of Lading must be signed by the shipper.

You Gave Away the Farm

If the Loan Agreement states a value and the museum agrees, the institution is responsible and has to be sure there is insurance in place to cover the agreed amount. An independent appraisal could help substantiate this value in the event of loss.

A Co-insurance Clause requires the policy owner to insure for the full replacement value of the property being insured. In some cases the full value can be reduced to 80 or 90%. Most museum Fine Art policies do not have this stipulation.

A request that pays the owner of the artwork, not the museum/borrower is covered by the Loss Payee Clause.

An Auction House insurance policy has special provisions for value depending on the specifics of the consignment.

Art that requires special attention may need Workers Compensation insurance, General Liability insurance and adequate permitting by local authorities.

My Kid Could Do That

Commercial General Liability insurance would provide coverage if artwork in a show falls on a person, and they suffer multiple injuries and sue the museum.

Fine Art Title insurance transfers the financial risk of title disputes, actual or alleged, to an insurer.

When an auction house/museum or dealer damages a work prior to sale the Consignment Agreement is used to determine value as per contract.

The need for third party appraisal arises when the opinion of the loss adjuster for an insurance company differs from the museum's opinion on depreciation.

ACE, Aspen Specialty, AXA, Berkley, Chubb, Hiscox, Lloyds, Travelers and XL are insurers that provide All Risk Fine Art Museum & Exhibition insurance.

Final Jeopardy

What is the statute of limitations on filing suit against an insurer? This is a state-by-state issue and is different for Property and Liability.