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What Can Be Covered, What Can Sometimes Be Covered and What Is Almost Never Covered

*Rebecca Woan**

JAMIE HARRMANN: Hello, everyone. And welcome to the annual symposium for the DePaul Business and Commercial Law Journal, and the Journal of Art Technology and Intellectual Property. This year's symposium is on the insurance and transactional issues in art and cultural property. I am Jamie Harrmann. I'm the Editor-in-Chief of the Business and Commercial Law Journal.

I would also like to introduce the EIC of JATIP.

MICHAEL HORNBACk: I'm Michael Hornback. I'm the editor in chief for JATIP, which is the longest acronym for any journal at DePaul here, so I won't go over it again. We specialize in art technology, intellectual property, patents, copyrights, trademarks, and the like.

We started off as just the Journal of Art and Entertainment Law, and subsequently included IP, since that was a big part of it as well. JATIP reviews developing legal and policy issues in the fields of art technology and intellectual property.

MS. HARRMANN: We are excited to present this year's symposium, which features Ms. Rebecca Woan, the principal and founder of Chartwell Insurance Services, who is going to discuss what items can be covered by insurance, what can sometimes be covered by insurance, and what can almost never be covered by insurance.

Let me be the first to say thank you for attending today, and I hope that you guys learn a lot, have a blast doing it. And now, without further ado, I would like to introduce Emily Bonnema, who is the symposium editor for JATIP.

MS. BONNEMA: Good morning. I'd like to introduce Ms. Rebecca Woan today. She, as Jamie said, is the principal and founder of Chartwell Insurance Services, Incorporated. Ms. Woan started Chartwell because she felt high-net-worth individuals were often inadequately served by insurance intermediaries, and that these individuals and their families required a customized approach to property and casualty insurance, which would be best handled by a dedicated, spe-

* Principal and founder of Chartwell Insurance Services.

cialized brokerage. Ms. Woan's own interest in the art world complements the passion of Chartwell clients who are collectors, because she understands the challenges of acquiring, protecting, and maintaining collections.

Ms. Woan currently serves on the governing committee of Illinois Fair Plan and is a member of the Independent Insurance Agents of Illinois and the Chicago Finance Exchange. She also serves on the Auxiliary Board of the Art Institute of Chicago, and the ARZU Advisory Board, and is a member of the Arts Club of Chicago and the Women's Athletic Club.

Ms. Woan graduated with a Bachelor of Arts degree from the University of Pennsylvania in international relations in French and obtained an MBA in finance from the University of Chicago Booth School.

We are excited to have Ms. Woan here today and are excited to introduce her as our first speaker. Thank you.

MS. WOAN: Thank you very much, Emily, and everyone here. Can everybody hear me? I don't have a PowerPoint presentation because I never really liked them very much, so I'm going to talk to you today — a slightly wide-ranging discussion. I thought it would be helpful to incorporate law into insurance, because at the end of the day, insurance is all about contracts, and everybody here is either an attorney or wants to be one.

When I started talking about this presentation, it ended up being slightly wandering, because if we have a straight discussion about what's covered and what's not covered, that's actually a little bit boring and most of insurance is boring. I think the court cases are probably more interesting than the insurance. That's actually good news for you since you're studying to be attorneys.

But also, as a broker, I can tell you that a lot of people forget about their insurance. They view it as of inconsequential. And I will often say, nobody ever really gets excited about insurance. You never have anybody call you up and say, "I'm so excited I just got an insurance policy today." So as a result, they forget about it until they need it, which is when something really bad happens. The job of a broker — and that's what I do — is to try to work with people on risk mitigation and education so that we can prevent those really difficult situations where you have a claim, and also, to inform people where a claim may or may not be covered, and that's the discussion today.

I don't know if you received the handout and if you need additional copies, we can get them for you as well. I've included a lot of links to cases and articles that I felt were interesting. They may or may not be

interesting to you. As an insurance person, I get excited about contract language, which may not be interesting to the average person.

What I'd like to do is start talking about what's covered and what's not covered and also encourage you to feel free to ask any questions along the way. This is not a formal talk by any means.

My goal, also by the end of this, is to have you maybe a little bit more comfortable with the lingo. So when you see something like provenance — so provenance is pronounced provenance, and it's actually something that's really important for insurance in part because it's not necessarily an insurable event. And I'll get to that a little bit later.

So what you'll hear is very Basic Insurance 101; what's going to be covered under an insurance policy — and the best policy that you can get is an all-risk policy. But by definition, all-risk doesn't cover all risks, so it becomes everything covered except what's excluded. And within that is a lot of gray area.

The things that are very simple and plain vanilla are theft. If something is stolen from you in the true sense of a physical theft, that's covered under an insurance policy. Flood; generally covered. Not always covered under a homeowners policy, interestingly enough, but flood, under most fine arts policies, is actually covered, which is why you like — or as a broker, we really like — to have art covered under a fine art policy or a fine art schedule, because that coverage will, in fact, be considerably broader.

Earthquake is generally covered under a fine arts policy. It depends on the location. If you're in an earthquake-prone area, the underwriter may want to surcharge for the risk that is earthquake prone, or they may instead decide to exclude the amount of art that is going to be in an earthquake zone. Fire is covered. Transit is covered.

I would say that the majority of losses that occur to art tend to occur while art is in transit. So one of the things that we try to do is encourage people, even though their insurance policies cover transit, to have their artwork packed properly and shipped by an art handler. Many movers will proclaim that they are art experts and they tend not to be. And Brian Shannon is actually in the audience here, and he is a former AXA art insurance underwriter and has even more stories than I do about awful things that has happened to art while in shipment.

Another thing that's covered in a fine art policy that most people don't know about, unless you insure art, is loss in value. And loss in value means I have a work of art, and if it's damaged, it can be repaired, and that repair is going to be covered under the policy. And if

you have a homeowners policy, it will probably be covered under your homeowners policy. But after that repair, the integrity of the work is compromised and it's no longer worth as much as it used to be worth prior to the loss.

Many fine art policies will also cover loss in value, either fully or up to a certain percentage of the value of the work as it was scheduled. And one of the most interesting cases about loss in value is the story of Picasso's "Le Reve." And I don't know if any of you were familiar with it. It was big news in the art world in 2006 when this happened.

The story is that Steve Wynn, a casino owner, is also a big art collector. Some of you may have seen his artwork if you've ever been to Las Vegas. Steve Wynn has a degenerative condition and he's losing his sight, and his depth perception is gone. So he had, I think it was, Nora Ephron and Barbara Walters in Las Vegas. He was really excited because he just inked a deal with Steve Cohen, the hedge-fund guy — the one that was recently indicted but still has several billion dollars left over — to buy his Picasso. And he was madly gesticulating and literally elbowed his Picasso. There was a very audible tear, and suddenly that sale was in jeopardy

Wynn had purchased this work for \$48 million in 1997. In 2006 — so nine years later — he's ready to sell it for \$139 million. Not a bad return. It's a particularly good example of a Picasso work, and one that Steve Cohen really wanted. Wynn had the painting restored, and an expert said that after the restoration the painting was worth only \$85 million.

This particular work was insured by Lloyd's of London and that \$45 million gap between the sale price and the value after the loss, if you will, was the entire profit of the Lloyd's London art market for that year. So it was a really big loss. And this was litigated. I think they actually settled out of court, but ultimately Steve Wynn received a reported settlement of \$45 million.

In 2013, Steve Cohen purchased the painting for \$155 million. I suspect that there was some thought to wait a certain number of years so that the insurance companies couldn't claim fraud or anything like that. But it was a really handsome return for Steve Wynn and also a really good example of how loss in value may be covered.

And, of course, part of what you need to do is discuss who's going to be the arbiter, who's going to make the decision about what that loss in value is, and, clearly, different experts will have different opinions. But this is where you kind of get into the gray area of insurance,

and that's the fun one. I've included a link to this article that Nora Ephron wrote about it.¹ It's a good read.

And so then let's talk about what's not covered.

Wear and tear is not covered. If you hang your pastel artwork in front of a window and it fades, your insurance company is not going to pay for damage due to sunlight.

Inherent defects and intentional acts. If you intentionally damage your artwork — and, again, it would have to be really intentional, like, ripping it off of the wall and flinging it to the ground. Most people wouldn't admit to doing that anyway, but you shouldn't, because it won't be covered by your insurance policy.

Now, other things that people will sometimes want to have covered, I don't know how much it's coming up, but I think it is going to come up more and more, is canceled sales at auctions.

I don't know if you're aware of this, but when you, as a collector, submit your work to an auction to be auctioned off, you submit it with the understanding that the auction house is going to properly market your work and that anybody who bids on the artwork is going to be in a position to pay. The person who bids on your work may, at the end of the day, say that they want to cancel the sale. Your work is then suddenly a little bit like what we call damaged goods, nobody wants it anymore, and suddenly you're left with a work that you can no longer auction, at least not for the next few years, and a work that's not sold; that is not an insurable event.

So this speaks to the importance of proper contracts when you are consigning a work of art with an auction house, to find out exactly how your work is going to be sold, are there going to be guarantees. This is one reason why some collectors want guarantees, because they don't want to be left holding a canceled work. It's also a reason why we'll see more and more private sales. A lot of auction houses do conduct a considerable portion of their business as what they call private sales. And this gives a lot more protection to the seller as well.

Another thing is rescission of sales at an auction. You submit your work of art and it's written up in the catalog, and then something comes up along the way and somebody questions the provenance and says, "Well, I actually don't think that you have the right to sell this artwork." And this happens more and more often. It's not just pre-World War II artworks that may have been misappropriated by the Nazis. Sometimes it can be someone trying to de-accession a work

1. Nora Ephron, *My Weekend in Vegas*, HUFFINGTON POST (Oct. 16, 2006), http://www.huffingtonpost.com/nora-ephron/my-weekend-in-vegas_b_31800.html.

that they don't really have the right to sell. It could be that you claim that your great aunt left you this work of art, but somebody else in your family notices it and says, "Wait a minute. That was Aunt Betsy's, and she left it to me, not to you." And the auction house is just going to raise their hands and say, you know, "We're not auctioning your work. You take your work back." And that's not insurable. However, there are some exceptions, and we'll get back to that.

Nonpayment of sale price at an auction. So if you — if your work is sold and the buyer is no longer able to pay, again, you're left with damaged goods, and that's not insurable.

There are sort of three more examples of uninsurable situations. There's condition, there's authenticity, and then there's title. If we talk about condition, insurance companies can't really insure for condition. So the condition of the artwork is the condition of the artwork. Once you've insured it, the insurance company can insure for damages, depending on how those damages occur.

Authenticity, which basically is the work; what you think it is. Is my work really a Picasso, or is it something that somebody painted in a back room and made it to look like a Picasso?

It's virtually impossible to obtain coverage for that, but that speaks to the importance of making sure that you've done research. And, if you do the title research or the provenance research before purchasing a work of art, you'll generally also be able to determine whether or not a work is authentic.

I think sort of the most classic cases of authenticity right now are anything that's Asian; anything that's African. We see so many kind of fraudulent items being passed off by dealers, both overseas and in the U.S., as being authentic. And it's hard to authenticate something that is 2,000 years old.

But there is, in fact, art title insurance that's a separate policy and a separate coverage. There's only one that's available that I know of right now, which is by a company called ARIS, and you can insure your artwork. And when you've insured the title to your artwork, you can use that when you go to sell it.

The catalog at an auction house might actually list that you have art title insurance, so it gives a certain amount of protection to both the buyer and the seller that if it's not what you think it is, at least there's an insurance policy backing it up.

That's a relatively new product, though. I think ARIS has only been in operation less than ten years.

QUESTIONER: It's a little more than a decade, but it took some time to get rolling.

MS. WOAN: It's a little bit like title insurance on a home, although it just seems to be, to me, a little bit easier to determine whether somebody has clear title on their house than clear title on their artwork.

And the things that may be covered: Repairs.

If you are taking your artwork to a conservator to be repaired and damage occurs at the conservator's, it may or may not be covered.

This is the importance of communication between a broker and the insured so that you tell your — you have them communicate with the insurer and tell them what you're planning on doing and they can tell you if they have any concerns.

If there's a fire at the conservator's, that's pretty straightforward. There was a fire. But let's say they didn't repair your work properly, that may or may not be covered. And that's why if you're having a work repaired, you want to have a lot of discussion in advance. You probably want to have a condition report and an entire procedure and protocol set up so that you can determine if this exactly what you want done to your work or not.

Another thing which — and I put this under the “may be covered” is conversion. Conversion, to me, because I am an insurance person, theoretically shouldn't be covered. Conversion is an act which that deprives someone of their property without consent. How can conversion occur with art? Well, conversion can occur when I, as an owner of a piece of art, decide that I want to sell it. And I go to a dealer and I consign my artwork for sale. I don't have a lot of control from that point on. Very few dealers like to make a sales agreement public, so I don't really know what the artwork was sold for. I don't really know when the work is changing hands. I don't really know how much for, and I don't really know if there was payment received before the work actually left the dealer. I don't know if the payment was legal tender. Did the buyer submit a check that bounced?

All of a sudden I've got all these issues, and I'm at the mercy of the dealer. I'll go into more discussion about ways that we can avoid some of this, but this is generally what happens when you consign works to dealers. It is a very opaque process. I feel like sometimes it's very similar to a transaction between the Mafia, and if I didn't know that it was art, it really could be anything else. And that's just the way that it's been done.

The problem is that as artwork increases in value, the amount of money that's at stake in these transactions becomes quite substantial.

And someone's reputation may not be what you expect. And if you're a collector who's attempting to consign artwork and caught with a gallery owner who is not remitting the proceeds to you, you're suddenly left without your artwork and without your proceeds.

There have been some pretty interesting court cases about conversion. I've included a couple of them, and I'll ask Brian Shannon to talk a little bit more about them, because he was an underwriter during this time and had an opportunity to see it from the company side. It seems to me that the decision depends a little bit on the venue. Certain courts and certain judges have interpreted conversion differently. And so I'll start talking about a really simple one.

Sam Zell, people might know him, he owns the Tribune — or did own the Tribune — and also, is a big art collector and benefactor. He had consigned several pieces of art to a dealer who did not pay him and I think declared bankruptcy. He obtained a \$5.7 million settlement from Chubb, and Chubb turned around and tried to recover from the dealer. I don't know if they were successful or not in recovering, but that case was fairly straightforward. There was not a lot written about this and there weren't a lot of appeals about that one.

It came, interestingly enough, four years after another pretty big case here in Chicago, which is *Frigon v. Pacific Indemnity Co.*² You sometimes see the case referred to as Pacific Indemnity, which is one of the writing companies of Chubb.

Insurance companies have writing companies and may use them because they want to do filings different ways. If you see a policy written with a company name that you don't recognize there is a chance that the parent company is a bigger name that you do recognize.

The *Frigon* case was pretty curious because this was a couple who had worked with the R.H. Love Galleries, who I think are actually still in business in Chicago, and they consigned a number of works. At one point they demanded the proceeds from their work, and the gallery owner just said, "I don't have them and I'm not able to pay you." They turned around and said, "Well, if you don't do that, I'm going to sue you, but I'm also going to claim this on my insurance policy."

This case made its way to the Northern District in Illinois, who ruled in favor of the plaintiff. The judge made an interpretation that legal experts have said is sort a bit of a stretch.

The judge determined that the gallery had, in fact, converted the artwork and ruled that conversion is covered by the terms of the in-

2. *Frigon v. Pac. Indem. Co.*, No. 05 C 6214, 2007 U.S. Dist. LEXIS 17813 (N.D. Ill. Mar. 14, 2007).

insurance policy. What the judge said is that this conversion was no different than if somebody had stolen the artwork.

In the insurance world, we view theft as a physical theft, not as a nonpayment, which is what happened here. After this case, we — as in people in the insurance world — we expected that the insurance companies would start to rewrite their policy language to specifically address conversion, and that hasn't happened.

I've spoken to people at Chubb about this, and they said that they felt like it would cost too much money to re-file in all the states that they operate in, and that these cases won't occur very often, and they're willing just to leave the policy language the way it is. If they have a few more really large cases, that may change. But for the time being, the policy language is unchanged in what were fairly significant court cases.

Other venues, like New York, there was a case concerning a gallery called Salander-O'Reilly, which had a long-storied history in New York. They had been in business over 100 years. And there were a lot of famous people who were swindled by this gallery including Robert De Niro and John McEnroe. I think McEnroe was the godfather to one of the children. It became very big and very personal.

There were a number of lawsuits against AXA Art Insurance. One was — and I will refer to it by its initials because it is kind of a mouthful, Frelinghuysen Morris, FMF. This was a trust that was established by two abstract artists, Louis and his wife, Susie. He died in 1975; she died in 1988. And in 1995, the trustees consigned some of their artwork to the Salander-O'Reilly Gallery, and they consigned over a period of time.

In October of 2007, they learned about a court-ordered closure of the gallery. And later that month they brought suit against Salander-O'Reilly, and they also filed a claim against their AXA Art Insurance policy. In November of 2007, the courts declared an involuntary bankruptcy of the gallery, and in 2010 Salander admitted that he stole artworks.

One of the issues that the Court considered was AXA's denial of loss. It took AXA eight months to file their denial. They didn't include a reservation of rights, which insurance companies usually include when they're denying a claim.

Is everybody familiar with what you call reservation of rights, or do you want me to kind of go through that a little bit more? Reservation of rights is — I'm the insurance company, and I'm going to deny this claim, but I want you to know that I'm reserving my rights to do a lot

of things. And one might be, I want to reserve my rights to maybe find out a few more things that maybe I didn't know about right now.

From what I'm gathering, it probably wasn't the best-written denial. Initially they said the loss wasn't fortuitous. So fortuitous losses are covered, not fortuitous losses are not covered. They said, "Look, a fortuitous loss would be a fire and this is not a fortuitous loss. It's not covered under the terms of the policy."

What I should also add is some of the works of art were sold and proceeds weren't remitted. There were also a number of unsold works that remained at the gallery that were seized when the government made the court-ordered seizure of the gallery.

The foundation was left with two things: 1) a bill that wasn't paid and also 2) works that they claimed that they still owned that they couldn't get their hands on. The courts also denied the demand for the unsold works because they said that the works in possession of the gallery should be recovered through protocols already established.

Ultimately, what happened here was the defense said that they had filed this claim in ample time — because you do have a limitation on your insurance policy as to the amount of time that you're allowed to claim the loss. The court denied FMF — the foundation — FMF's motion, holding that the loss of the painting was a fortuitous loss that was covered under the policy. However, the court actually ruled that the foundation no longer had an insurable interest once the works were sold.

So it's this little nuance that's sayings the loss would have been covered, but as soon as the gallery transferred ownership to somebody else, the foundation, the insured, no longer had an insurable interest because the works were no longer theirs. The insurance company couldn't be expected to pay.

This is different from what happened in *Frigon* where the court said, "Okay. It's conversion, and it's covered under your policy. Conversion is a covered loss." This is an example of a courts finding two different ways to look at the coverage. And the *Frigon* case, I think, also is really a testament to the plaintiff's attorney who filed the case and actually found probably the best — the most advantageous way for their client to be covered.

And when I look at court cases as an insurance person - and I haven't seen that many, but I've seen a fair amount in my time as an insurance broker - some attorneys don't understand art that well. An attorney needs to understand art and the law well enough to represent a client. And I've seen it in property cases as well. I've seen it in casualty, which is what we call liability. Liability is casualty. So it's

always very important to make sure that you're filing the strongest, what I would call in laymen's terms, angle.

Now, another case was Philadelphia Museum of Art against AXA as well. And Brian can talk a little bit about that one, because he knows that one pretty intimately. But on that one, the courts actually refused to rule on the issue of conversion, and they said that the statute of limitations had passed for the insured to file the claim. And they denied the claim based upon the time lapse.

So, Brian, do you want to add anything to these cases?

QUESTIONER: That's pretty much exactly it. So under the PMA insurance contract, they had one year after discovering loss to file their claim. They waited too long. It was like a year and a couple of months, and so the court said, "No good. It's not covered."

But this is also three years after the PMA gave the artwork to Sander-O'Reilly. So they weren't even watching to see if the thing had been sold. But it's basically just time lapse. It was a very simple matter for that case.

MS. WOAN: And the two AXA policies, the FMH policy and the Philadelphia Museum of Art policy, were slightly different. And when you have fine art policies, as a broker you can go to the underwriter and say, "I'd like to have this included," or "I'd like to have this excluded," and the underwriter may or may not agree to do that.

So not every policy is identical. And it's the job of a broker to try to get the strongest contract for an insured because it's the broker's job to protect the insured. But some AXA contracts actually, as I understand it, as least as I read in some of these proceedings, actually exclude conversion. Is that — or are we just starting to see that more and more after this particular incident?

QUESTIONER: I don't think you'll find the wording that specifically excludes conversion in an AXA policy, but they do have other triggers — in the policy. So most insurance companies don't want to go to the trouble of changing their policy because you have to do that in 50 states. Every state has its own insurance regulations. So you have to file in every state separately. That costs a lot of money. And if you just want to add one little phrase, "conversion is not covered," and your conversion claims are very small in comparison to all your other claims, it's not really financially worth it.

So, so far, that's kind of the case for the insurance companies. But AXA has relied on some other specific words in their policies to knock the cases out of court like timing and who's involved in the claim. They rely on other exclusions within the policy to kick it out. But as she said, it depends on what state you're fighting in the court.

Because in Illinois, conversion, in some cases, is part of the policy, it's theft. In New York, where some of these others were filed, they took a different standpoint.

MS. WOAN: This speaks to the whole consignment issue, which is not necessarily a legal issue, but it's a procedural issue. And in both the cases, and probably in the *Frigon* case as well, though, I don't know that — I don't know the circumstances as intimately, these artworks were consigned and no one looked at them. No one talked — and some of these consignments that occur with these galleries, by museums and by collectors, will last over years.

And when the Salander-O'Reilly issue really sort of hit the press, people were scrambling to try to figure out what artworks they had consigned with them, because they consign artwork so many places, and many consignors did not have good records.

It's really astonishing when you consider the value that we're talking about. But as I said, it's been a very cavalier practice. The consignment agreement, apparently, with the Philadelphia Museum of Art, I've been told, was a very loose consignment agreement. It didn't have a lot of protections for the museum, and it should have.

In addition, there should have been a UCC filing on every piece of artwork that was consigned. You'll see banks making UCC filings on artwork that they're lending on where art is securing the loans. Banks tend to be pretty good about things like that. The general public and the art community are not.

So in the case of FMH — and I think also in the Philadelphia Museum of Art, because I think that they also had some works that were consigned that were seized by the government. They would have had the right to reclaim the unsold artworks had a UCC filing been done, but there wasn't any. So then they just became property of the seizure and they were auctioned off and sold to whomever was in line in terms of creditors.

Many of the unsecured creditors didn't recover anywhere near the amount because they never did a simple UCC filing. I looked it up, in Illinois, it costs \$54 or something like that. You're not going to file a UCC if you're consigning a \$500 piece of artwork, but if you're consigning a \$300,000 or \$3 million piece of art, it makes sense to have a UCC filing.

Another thing that happened is that nobody visited the artwork. There are legendary stories about artwork consigned at galleries who are notorious for saying the artwork sold just yesterday every time you call up and inquire about whether the art was sold. Everybody finds it just uncanny that, some of these galleries will always have sold

within the last few days before an inquiry. They don't tell you that the artwork was sold until asked. And if no one asks very often, that indicates fairly shoddy recordkeeping on behalf of the owner. The UCC filing, I believe, has to be renewed every year or every six months.

If you have a piece of art that you've consigned with a gallery for over three years and you've done nothing about it and you haven't seen it, you actually don't really know where it is. Legally, our ability to claim and your right to your art diminishes with the amount of time that you've let lapse.

If proper protocols had been established and followed, many of these things might not have happened, or maybe the consignors would have had their money before Salander-O'Reilly went bankrupt because they would have known sooner that the art had been sold. It's a really sad ending to long established sloppy practices in the art world.

Another thing that I included on my presentation handout here are some interesting articles about entrustment and consignment. This last one is by Cardozo, which I assume is part of their law school, it's a long explanation of the shortcomings in the UCC law as it exists and proposed changes.

If anybody here is interested in going into art law, these are the sorts of things that are really important and can dramatically affect the outcome if works of art are being consigned, both to auction houses, galleries, and private consultants.

Let's see here. We've got a couple — minutes left. I should open this up for questions.

QUESTIONER: I assume one hotly contested issue in these cases is when the loss occurs, especially when, you know, in jurisdictions where the side of the conversion is covered.

So I don't know if you can — if that's something that's kind of in your bailiwick, you know, how the courts decline when the loss occurs and to what extent. Is that ambiguous in the policy? And if it is, what are the different approaches?

MS. WOAN: The *Frigon* case actually spoke to that, when did conversion occur. Did conversion occur when the work was purportedly sold, or did conversion occur when the plaintiff asked for the work and the work was denied? Because the court in *Frigon* actually said that at that point the gallery could have remitted the artwork. Although, you would be hard pressed to find out how they could remit artwork that has already been sold.

And there's no duty of a purchaser to have to remit artwork that was wrongfully sold to them, unless it was — unless they can determine that it was a completely fraudulent transaction and there had been fraud on the part of the purchaser. So, again, this may also have to do with the venue as well.

The timing, again, speaks to the importance of making sure that the art really exists, and it's also the duration. Because if you have a time limit on filing of a claim and you have left your artwork and you — even if you call up every few months and say — or maybe you set a diary and you call once a year and say, "Have you sold my artwork?" And they say, "No." you actually don't really know if it has been sold or not. Somebody physically needs to go and look at it and make sure it's still there. That is very important, because then you can actually establish a reasonable timeline.

QUESTIONER: I'd like to ask: One of the biggest crimes against humanity in the 21st century was 2003 when the U.S. invaded Iraq. And one thing that I still remember, and then I read about it later on some years later in the New York Times, over thousands of irreplaceable items of art were stolen from the museum in Baghdad. And I think about half of them were recovered. Now, the other half, I assume, are in secret museums which are owned by the super rich, which we in our lifetime probably will never see. Maybe they're saving them for after everybody's dead, 100 years from now.

But in the meantime, do they have the right — how can they insure these or — aside from their own closed circle of people that know about where these stolen artworks are?

MS. WOAN: I think you would be hard pressed to try to insure something that was on an art loss registry or — I mean, there are so many examples of stolen works of art. Edvard Munch, *The Scream*, and then the Isabella Stewart Gardner Museum, that gigantic theft that's still unsolved, and that was early '90s, late '80s. I think it's an interesting question, because it depends on what the definition of stolen is.

I am thinking about the Elgin Marbles in London right now. Greece has been lobbying to get the Elgin Marbles back. And George Clooney's wife right now is arguing on behalf of Greece to get the Elgin Marbles back. I suppose that they're being insured right now, I mean, if the museum is purchasing insurance.

If it's a really prominent piece that was stolen in the past seventy five years, it would be difficult to find an insurer who would be willing to insure stolen art. And I think by your own admission you probably

wouldn't want to make it public that you had something that was known to be stolen.

MS. WOAN: Yes.

QUESTIONER: Are museums getting insurance for each individual piece or can they get a policy that covers everything?

MS. WOAN: That's a great question for the presenter this afternoon. Most museums can't insure their entire collection, it's simply too expensive.

And Brian can talk to you a lot about museums, because AXA does a lot of insurance for museums. Museums tend to insure on what is called a blanket policy. They will have a huge dollar amount that will cover a lot of things. And their hope is that there won't be a raging fire or a massive water loss that would destroy everything in the museum, simply because they can't afford to insure every piece of artwork that they have. In all the major art museums, none of them can insure to value. There's just too much art there.

MS. HARRMANN: Any additional questions? Thank you.

MS. WOAN: Thanks.

MR. AHASAY: Thank you very much.

