

IMAGE COURTESY OF THE KIMBELL MUSEUM OF ART, FORT WORTH, TEXAS



JOSEPH M. W. TURNER'S painting *Glaucus and Scylla* (above) was returned by the Kimbell Art Museum in Fort Worth, Texas, to the heirs of John and Anna Jaffé. The painting, which had been in the museum's collection since 1966, was returned after an investigation into its provenance revealed that it had been seized by the pro-Nazi Vichy regime in France in 1943.

● PROPERTY/CASUALTY

Securing The Chain

Art title insurance offers buyers of artworks coverage for the chain of title and lien risks inherent in art as a form of property. **BY STEVE YAHN**

From Los Angeles to New York, there's something new and exciting on the American art scene—and it's not about an artist or a work of art.

It's about insurance.

Art title insurance, to be specific.

Insuring title to works of art is not a new notion, but having a solid product in the market is.

The idea isn't new, says, Richard Gray, partner in Richard Gray Gallery in Chicago and New York, but it's an idea that was, and is, a good one.

Why? "It would be a very positive thing for the visual-arts universe if there were such a process that really works and was really secure and predictable," says Gray, a former president of the Art Dealers Association of America.

Adds Chicago-based Scott Hodes, corporate attorney for Bryan Cave LLP, "Is there a business there? Yes, I think so. For example, there are people who will go into a dealer, and they will like a work of art, an older work of art, say, and there may be some question on title. That collector may say, 'I'm going to insure the title just to make sure I have protection on the legal title front.'"

There are a variety of scenarios in which art title becomes an attractive possibility: The works of living artists, for example, can be insured right out of the box, to establish a chain of provenance and clear-cut legal title from day one.

In addition, backing the title of Holocaust art, Works Progress Administration art that the government might lay claim to and art in Russian museums of questionable provenance is a major

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risk-driven area of opportunity for providers of art title insurance.

Hodes, whose clients include Christo and Jeanne-Claude, whose most recent work was the gigantic "The Gates" project in New York's Central Park, cites the hypothetical example of a collector interested in a painting that dates back to when there might have been some doubt about whether it was Holocaust art.

"So you say to yourself," Hodes says, "I'd really like to own that Renoir. I'm not really sure of the title, but I think it's a good risk.' So I'll go out and buy some title insurance, and then I'm home free assuming the insurance company will pay off."

Art title insurance went from a long-standing conceptual notion to an actual product in June, when two siblings—Lawrence M. Shindell, a Milwaukee-based attorney with two-plus decades of experience in art transactions, and Judith L. Pearson, a Denver-based insurance company veteran—launched Aris Title Insurance Corp.

Aris Title, owned by U.S.-based Aris Holdings Ltd., is offering the world's first transfer of legal ownership risk for art through its Art Title Protection Insurance policy.

Aris is a New York state-licensed insurance company and will write insurance for transactions closing in that state.

Says noted international financier, corporate consultant and lecturer Arthur Lipper III, one of the original backers of Aris: "In a litigious society, there is a need for asset owners to have this kind of protection. This is an elegantly simple notion. It provides an important comfort to owners of various kinds of art."

ATPI is a single-premium, indefinite-term policy, with coverage that is functionally identical to title insurance in the real-estate realm. "You can buy a house without title insurance, but would you want to?" Lipper muses wryly.

The ATPI product was designed for high-net-worth individuals, financial institutions, museums, art-investment funds, dealers and auction houses,



A PORTRAIT of William Poszby, second earl of Besborough, by John Singleton Copley, is being returned to Harvard University after it was reported missing more than 30 years ago. The painting belonged to the estate of William M. V. Kingsland, who died in March.

as well as corporate and individual collectors. The policy is structured to address the chain of title and lien risks inherent in art as a form of property.

Lloyds syndicate Hiscox, known for its expertise in the art world, serves as reinsurer of the Aris program. Initial and substantial financial support for the Aris program came from the Berger Collection Educational Trust, which has one of the world's largest collections of English art and is based at the Denver Art Museum.

Another major investor is Ritchie

Capital Management LLC, a Geneva, Ill.-based global alternative asset management firm with offices around the world.

Aris' capacity on a treaty basis is \$5 million per work insured, and it can provide increased limits of liability on a case-by-case basis.

ATPI, which was more than six years in development, was created for a variety of purposes, including the facilitation of art-gifting transactions, exhibition and lending of art, and finance and tax-based art transactions. ATPI will cover already owned or gifted works of art,

provenance and import/export title risks, and classic title risks such as liens.

The one-time policy purchase can be transferred to heirs, but if sold outside one's heirs, a new buyer will have to purchase their own policy.

While other companies offer insurance for damage or theft, the ATPI product focuses exclusively on ownership, notes Shindell, who is chairman and CEO of the company. Owners of these policies would be reimbursed for the value of works of art lost to title claims. In addition,

Aris would pay all legal costs involved in a dispute.

Adds Pearson, president of the company and a former senior vice president at Aon, where she pioneered the development of directors' and officers' insurance and other products: "There will finally be a true risk management tool for the known title risks in art transactions by providing a third-party financial guarantee for works purchased, sold, loaned, or used in financing or tax-based transactions."

Robert W. Koo, a New York-based art succession and philanthropy consultant, trust and estates, for Bonhams, the auctioneers and appraisers of fine art and antiques headquartered in London, says, "How I look at what Aris does is what I call provenance mitigation. I want to reduce the amount of risk in terms of any work of art I am acquiring, and I want to protect this asset well into the future, either to give it to my children or to use it for philanthropic intent."

Also, ATPI can play a valuable role in helping prevent the unraveling of tax and other considerations involved in charitable gifting of art. "The last thing I would want is for my entire transaction to

Exploring the Relationship Between Authenticity And Title

Editor's note: In a response to an e-mail query, New York-based Aris Title Insurance Corp., which writes insurance for transactions closing in the state of New York, explained the difference between insuring the provenance of a work of art and its authenticity. Because art as a form of personal property is mobile, the location of purchased art is generally not limited to one state, most art transactions in the United States inherently involve owners, dealers or transaction elements involving the state of New York, or by agreement of the parties, transactions will close in the state of New York. The vast majority of U.S. art transactions of significant dollar values will have the appropriate nexus to New York.

Steve Yahn: What is Aris' capacity in terms of coverage?

ARIS: Aris' capacity on a treaty basis is \$5 million per work insured, and we can provide increased limits of liability on a case-by-case basis. Our capital comes from a number of private and institutional investors. The institutional capital providers are Ritchie Capital Management LLC, a multibillion-dollar U.S. hedge fund, and a private foundation called BCET, the Berger Collection Educational Trust. In addition to the invested capital, Aris is reinsured by Hiscox to assure the proper capacity and longevity of the product.

SY: If Aris can insure the provenance of, say, a Van Gogh, why can't Aris insure it's authentic?

ARIS: Authenticity and title, although related, are two very different issues. Authenticity is a matter of opinion, and well-advised clients can hire the appropriate experts on authenticity to provide an opinion as they already do on this issue, as well as for connoisseurship and valuation issues. Based on that opinion, the buyer can make an educated decision. Title,

be unwound due to an issue of title for me or my heirs," observes Koo.

QUESTIONS ARISE

But despite the positive acceptance of the ATPi concept, like anything new and complicated, there are question marks dancing over the Aris product.

At a recent salon-setting gathering of some top New York-based insurance executives and art collectors, numerous questions were asked of the Shindell-Pearson siblings.

- Will Aris insure authenticity?

No, because unlike legal title, which is fact-based, authenticity or attribution can be a matter of divergent opinion. Authenticity and title are related but are two very different issues, says Shindell.

"Authenticity is a matter of opinion, and well-advised clients can hire the appropriate experts on authenticity and for connoisseurship and valuation issues," he says. "Based on that opinion, the buyer can make an educated decision."

Title, on the other hand, adds Pearson, "is based on a set of very complex fact patterns and variable laws ... The burden of the transactional exposure is one that

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—Judith L. Pearson, president, Aris Title Insurance Corp.



on the other hand, is based on a set of very complex fact patterns and variable laws. Unless a painting is being purchased directly from the artist's studio with no intermediary, the history of ownership will have gaps, and even works coming from the studio can present classic title risks. The dynamics in the art market as it currently stands make it impossible for buyers and sellers to be certain that no gaps in title or other risks to title exist. Therefore, the burden of the transactional exposure is one that buyers, seller and intermediaries should not take and is one that should be transferred to a third party (Aris) that can spread the risk over multiple transactions.

SY: How many policies have been written to date?

ARIS: Aris began offering art title protection insurance on June 5, 2006. We have had significant interest in the product and have received three submissions to date (requests to provide coverage) and expect to bind at least one of these in the next few weeks.

—Steve Yahn



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—Lawrence M. Shindell, chairman and CEO, Aris Title Insurance Corp.

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To facilitate its own research and assist prospective clients, Aris has built a database of information about works of art likely to be the

center of title disputes, starting with entries for works with gaps in provenance from the period when the Nazis confiscated art in Europe during World War II.

• Don't most art dealers and auction houses offer various kinds of transactional warranties and guarantees?

Yes, says Pearson, but “given all the challenges in what could have happened in previous transactions, it's impossible for somebody to warrant something they really don't know. And so, most transactions, if they are pushed to task, they're also warranting title, and we're saying, ‘That's impossible, you can't do that. You can't warranty something you don't know.’” Not to mention that in bankruptcies, such as that of the New York art gallery Berry-Hill Galleries, countless transactions were suddenly cast in doubt. “In the case of a bankruptcy, all prior liabilities cease,” Pearson says.

• Here, as they used to say, is perhaps the \$64,000 question: Solid as the product ATPI policy may be, will collectors put down an extra layer of money on a transaction?

Even the most asset-minded art collector is still first and foremost a collector at heart, and to get the aesthetic prize they seek—especially at auction—many of them want to concentrate all the money they can on the purchase price of the work of art itself.

• Then there's what more than a few critics of at least one part of the ATPI policy are most critical of: its cost.

Some are quick to draw the comparison between the relatively high per-work cost of ATPI's art title insurance and the fairly standard cost of real-estate title insurance. As an example, if there is a gap in provenance of a million-dollar painting owned in Europe during World War II, the average cost for title insurance is 5 percent, or \$50,000. “But, of course, pricing depends on the individual risk characteristics of a work of art, which could make the premium lower or higher than the average,” says Pearson.

In comparison, real-estate title insurance can cost as little as a quarter of 1 percent.

Also, unlike with real-estate title insurance, when the value of a work of art increases significantly, the holder of the ATPI policy must buy additional coverage up to the new value.

To critics of Aris on the cost front, Lawrence Shindell answers: “The real-estate industry is now in its 150th year and writes insurance according to a nearly zero-risk formula because of the existence of 150-plus years of register of deeds transactions.

“We are proceeding on a one-by-one basis in a new arena where there is no such thing as a perfect provenance or chain of title,” adds Shindell.

Clients? As of late October, Shindell and Pearson say they have had “significant interest in the product and have received three submissions—requests to provide coverage—and expect to bind at least one of these in the next few weeks.”

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