

## Gallery Consignment Case Could Impact Insurance Premiums

The most publicized recent art insurance case has been the lawsuit that casino owner Steve Wynn filed against Lloyd's of London for stalling on settling his claim after he accidentally elbowed Picasso's iconic painting *Le Reve*. Lloyd's settled the case in March, reportedly agreeing to pay Wynn approximately \$40 million for diminution in value of the painting, and over \$100,000 in restoring and consulting fees. However, a recent judgment in Chicago is perhaps more notable as it is expected to have implications for collectors, dealers, and insurers.

The ruling addressed whether an insurer may be responsible when gallery fails to pay the insured for consigned property. Colorado collectors Henry and Anne Marie Frigon consigned 11 paintings over a five year period beginning in 1997 with R.H. Love Galleries, a prominent Chicago gallery specializing in American art. The works were consigned to be sold for a minimum of \$1.6 million, but the gallery sold or traded them for a less than agreed upon amount. The Frigons were paid \$73,000 for the sales, but their scheduled installments ceased after two payments. It eventually became known that the gallery was insolvent and had been for several years, a fact unknown by the plaintiffs at the time of consignment.

The Frigons were unable to collect the amount from the gallery, and filed a claim with their insurer, Pacific Indemnity Co. The claim was denied, so they took the insurer to court on the basis that their policy covered "all risk" of physical loss. Fraudulently converting the status of consigned pieces does not fall under a traditional definition or notion of "theft" in a policy. However, the judge ruled in favor of the Frigons, citing "The fact that the gallery may owe plaintiffs the value of the lost paintings is no more significant than the fact that a thief would owe the victim of his theft the value of the stolen property."

Some insurers may revise their definition of "loss" or insist on pre-notification of any consignments in their policies. This could result in higher premiums and additional paperwork, particularly impacting those in the high-end secondary market. Litigation against R.H. Love Galleries is still pending for damages related to the consignment.

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