

Does a Shipper Have a Duty to Procure Insurance when Shipping Artwork?



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An important question for subrogation that arises when artwork is shipped and damaged or lost is: “Did the shipper have a duty to procure insurance?” This precise issue of law was recently raised in a decision issued by District Judge Jesse Furman in the Southern District of New York. Frustratingly, the Judge noted that the substantive law in New York is not clear on the issue, citing caselaw, much of which is more than 100 years old.

The dispute arose when an artist created a number of pieces for a commemorative exhibition honoring Martin Luther King, Jr. on the 50th anniversary of King’s death. After the exhibition, an art gallery assumed possession of the artwork pieces on consignment. When the last of the pieces did not sell, the artist directed the works’ return to a New York address. The art gallery used FedEx Ground Package System Inc. for the shipment, and the artwork was lost in transit.

The suit was originally filed by the artist in New York State Court against FedEx and the art gallery and later removed to the Southern District of New York,¹ as the transportation of the goods by a motor carrier raised federal question issues under the Carmack Amendment to the Interstate Commerce Act.

After discovery and upon motion practice, in February 2023, the district court found that artist was entitled to summary judgment as to liability against FedEx, but his damages were capped at \$1,000 under the Carmack Amendment, as it was undisputed that the co-defendant art gallery limited motor carrier FedEx’s liability by declaring the value of the artwork to be \$1,000.

In rendering his decision, Judge Furman noted that the remaining claims against the art gallery implicated at least one novel or complex issue of State law. Namely whether, under New York law, the art gallery had a duty to procure sufficient insurance when they shipped the artwork. The Court noted that it found some New York cases suggesting that the art gallery did have such a duty.² However, Judge Furman also noted that there are cases pointing in the opposite direction, as well.³

After noting the countervailing case law, the District Judge did not actually decide whether New York imposes a legal duty on the shipper to obtain sufficient liability insurance in limits that would compensate the owner for the amount of their loss but scheduled a settlement conference. In light of the comparable pricing of the artist’s prior sales (about \$12,000) and given the cost to litigate, it’s highly likely that the matter will settle without the legal issue ever being resolved.

The opinion is a reminder that in the absence of recent countervailing law, it behooves a representative to investigate and allege a shipper’s duty to insure the artwork in each particular claim in furtherance of a potential recovery opportunity.

¹ Ikegwuoha v. Art Village Gallery, 21-CV-6263

² See Graubart v. Posner, 68 N.Y.S.2d 910 (App. Div. 1st Dep’t 1947); Miller v. Harvey, 221 N.Y. 54 (1917); Rhind v. Stake, 59 N.Y.S. 42 (App. Term 1st Dep’t 1899).

³ See Stearns v. Farrand, 60 N.Y.S. 501 (App. Term 1st Dep’t 1899); Lehman v. Fischzang, 274 N.Y.S.2d 971 (Civ. Ct. 1966).