

Who Really Owns Your Art?

**An Interview with Lawrence M. Shindell,
Chairman and Chief Executive Officer, and
Judith L. Pearson, President, ARIS Corporation**



Lawrence M. Shindell



Judith L. Pearson

EDITORS' NOTE Lawrence Shindell formerly practiced law, representing or litigating against Fortune 500 companies in complex commercial and insurance trial and appellate litigation including litigation in international forums. He later developed an art consulting firm which focused on art transactional risk management, working with the top echelons of the art museum, dealer, advisor, and scholar communities in the United States and Western Europe. Shindell remains AV (highest)-peer review rated by Martindale-Hubbell and actively licensed before several United States trial and appellate bars including the Bar of the United States Supreme Court. Shindell has presented on the subject of the legal and financial complexities of title risks in the art world in the United States and Western Europe to the American Bar Association (International Law Section), various United States estate planning councils and wealth advisory groups, the Appraisers Association of America, Inc., and at leading art world venues, and has served as an expert witness in art title matters pending before the U.S. Tax Court. He has been quoted on this subject in publications like the Los Angeles Times and BusinessWeek.

Prior to assuming her current post, Judith Pearson was a Senior Executive Vice President and is one of the seven founding members of Chicago-based Aon Corporation's Financial Services Group (FSG) and the former head of FSG's intellectual property division. A veteran in the insurance industry whose career spanned underwriting for AIG and then Chubb as an underwriting manager and insurance brokerage at Aon and one of its acquisitions, she specialized in Intellectual Property Liability, Directors' and Officers' Liability, Fidelity and similar coverage forms, and underwriting for U.S.-based Fortune 500 and equivalent foreign-based corporations.

Her prior career included international new product development of the first fully drillable and minable management liability database for the property and casualty insurance world. Considered an expert, Pearson has been quoted on the subject of art title risks in The Wall Street Journal and Forbes magazine.

COMPANY BRIEF ARIS Corporation (www.aris-corporation.com) is a family of companies which brings to the global art and financial industries the first solution to art ownership complexities by providing the only third-party risk transfer in the form of a true title insurance policy for art, ATPI®. Operating under an insurance industry-standard corporate structure, the ARIS family of companies consists of ARIS Holdings, Ltd., and two operating subsidiaries, ARIS Corporation and ARIS Title Insurance Corporation, a State of New York domiciled title insurance company.

During your R&D phase in 2006, what did you see that made you feel there was a need for this, and that it would work?

Shindell: Historically, the art industry has managed the title risks through private indemnity, that is a dealer explicitly stating in the sales agreement – or implied under the uniform commercial code – that the dealer will guarantee clear legal title to the work. But the market quickly realized that it's not the business model of a dealer to support hundreds or thousands of guarantees. So the market clearly recognized that there was a risk and an exposure, but the market lacked an adequate tool to manage the risk, that is, a third-party risk transfer – insurance – that created a solution outside the dealer's private indemnity or outside the auction houses' solution of requiring consignors to execute a guarantee for which they may lack a factual basis, and exposing consignors and buyers to the risk of rescission or cancellation of the auction sale at some indefinite time in the future. So we saw the gap between need on the one hand and lack of a true solution that could only work as an insurance product. We are a classic insurance solution as a third-party risk transfer tool. The property insurance industry was robust in insuring the property risk in the art work – flood, fire, and so forth. For historical and regulatory reasons, property insurers cannot offer true title insurance – as we know in real estate, title insurance as defined by a one-time premium, life of ownership of coverage, without an exclusion for what the insured “should have known” versus

property insurance, which is typically renewable annually, with deductibles and exclusions and so forth. The title insurance industry has historically focused on real property, a very different kind of asset class, which would not serve as a model to underwrite the title risks around art and similar tangible personal property where the legal and factual reasons for title defects and how clear legal title is defined in an international market are very different.

Pearson: Ten years ago, when we had this concept, we like everybody else first thought of art world ownership risks as being related to provenance. In short order, the focus grew from simply World War II gaps in provenance to antiquity challenges because of import/export issues and similar matters such as Native American Graves Protection and Repatriation Act-related claims, which bear on Native American ownership issues. With the recent financial downturn, we see not only these more traditional kinds of art title issues but also case after case where people have used their art as collateral for loans, where works haven't been passed down through the estate appropriately, where works are subject to an IRS tax lien, and where a wide range of issues related to authority to sell are addressed, as illustrated by the Salander-O'Reilly case. So there has been an evolution in the marketplace that has really helped create ARIS as a brand.

In leading the company from the start, did you know that your expertise and interests would complement each other?

Pearson: We have always realized that our skill sets are very different, but at the end of the day, we're very similar in our goal. So in most significant decisions, we balance each other out. As we grow, we need to differentiate our roles more, but that's been an evolution that will continue.

Shindell: What we do is the convergence of three areas of expertise: one is insurance, both underwriting expertise as well as a brokerage or sales expertise; law, because of the many legal technicalities of being an insurer and creating and underwriting our product correctly; and the art historical perspective. Over the years, we both developed a lot of expertise in that area and we employ art historians as well. Our expertise as a company comes from a hyper-focus on these three disciplines and how they intersect. From a management standpoint, as we grow, we will develop a very typical specialization between our functions, but we're both driving the same point home in the market. ●