

## § 1160.4

of the Arts and Artifacts Indemnity Act.

(h) *Indemnitee* means the party or parties to an indemnity agreement issued by the Council, to whom the promise of indemnification is made.

(i) *Participating institution(s)* means the location(s) where an exhibition indemnified under this part will be displayed.

(j) *Termination date* means the date thirty (30) calendar days after the date specified in the indemnity Certificate by which an indemnified item is to be returned to the place designated by the lender or the date on which the item is actually so returned, whichever date is earlier. (In museum terms this means wall-to-wall coverage.) After 11:59 p.m. on the termination date, the item is no longer covered by the indemnity agreement unless an extension has theretofore been requested by the indemnitee and granted in writing by the Council.

### § 1160.4 Eligibility.

An indemnity agreement made under these regulations shall cover:

(a) Eligible items from outside the United States while on exhibition in the United States;

(b) Eligible items from the United States while on exhibition outside this country, preferably when they are part of an exchange of exhibitions; and

(c) Eligible items from the United States while on exhibition in the United States, in connection with other eligible items from outside the United States which are integral to the exhibition as a whole.

*Example 1.* Museum A, an American art museum, is organizing a retrospective exhibition which will include more than 150 works of art by the Impressionist painter Auguste Renoir. The exhibition will present the full range of Renoir's production for the first time ever in an American museum. Museums B and C, large national museums in Paris and London, have agreed to lend 125 major works of art illustrating every aspect of Renoir's career. Museum A is also planning to include related works from other American public and private collections which have not been seen together since the artist's death in 1919. Museums D and E, major east coast American art museums, have agreed to lend 25 masterworks by Renoir. The exhibition will open in Chicago and travel to San Francisco and Washington.

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### DISCUSSION

Example 1 is a straightforward application of the amended indemnity regulations. Under the old regulations, only the works of art from Museums B and C, the foreign museums, would have been eligible for indemnification. Under the proposed Regulations, the works of art from American museums and other public and private collections also would be eligible for indemnification. In determining whether to indemnify the entire exhibition, the Federal Council will evaluate the exhibition as a whole and whether the foreign loans are integral to the educational, cultural, historical or scientific significance of the exhibition. In this example, the Federal Council would likely approve indemnification of the entire exhibit.

*Example 2.* Museum A in Massachusetts is organizing an exhibition celebrating 250 Years of Decorative Arts in America, to be held in conjunction with the state's celebration of the millennium. Included among the objects to be borrowed from museums and historical societies in the United States are furniture, textiles, metalwork, ceramics, glass and jewelry, illustrating the best examples of American design from colonial times to the present. The curator traveled abroad recently and saw an exhibition of American quilts which have been acquired by a British decorative arts museums. He intends to borrow several of the quilts for the exhibition.

### DISCUSSION

Example 2 raises the question as to whether the American museum organizing the exhibition has included the British-owned American quilts merely to obtain insurance relief. In determining whether to indemnify the entire exhibition, the Federal Council will evaluate the exhibition as a whole and whether the foreign loans are integral to achieving its educational, cultural and historical purposes. Here, it is likely that the Federal Council will conclude that the foreign work are not an essential component of the exhibition. The Federal Council also may seek additional information from the applicant to determine whether the objectives of the exhibition could have been accomplished as satisfactorily by borrowing American quilts from U.S. collections. On these facts, the Federal Council in all likelihood would deny indemnification for the entire exhibition.

*Example 3.* Museum A, an American museum, is organizing an exhibition of the works of James Watkins, a nineteenth century American painter, focusing on his studies of human anatomy. Museum A has the foremost collection of preparatory drawings related to Watkins' major painting, "The Surgeon and His Students." The painting is in the permanent collection of Museum B, located in the south of France, which has

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agreed to lend the painting for the exhibition. The exhibition will be shown at Museum B after the U.S. tour. American Universities, C and D, have also agreed to lend anatomical illustrations and drawings which show Watkins' development as a draughtsman. The exhibition and accompanying catalogue are expected to shed new light on Watkins contributions to art and scientific history.

### DISCUSSION

Example 3 addresses the issue of whether the Federal Council will indemnify an exhibition even where the U.S. objects outnumber the foreign works. In determining whether to indemnify the entire exhibition, the Federal Council will evaluate the exhibition as a whole and the relationship of the foreign loans to the educational, cultural, historical and scientific significance of the exhibition. In this example, the exhibition promises to make important contributions not only to the history of art but also to the history of science. While there is only a single foreign work of art, it is clearly an essential component of the exhibition as a whole. The case for indemnification of the entire exhibition is further strengthened by the fact that a foreign masterpiece, which is closely related to the preparatory drawings and anatomical illustrations and drawings owned by American institutions, will be made available to the American public. Thus, the mere fact that the U.S. loans outnumber the foreign works will not in itself disqualify the entire exhibition for indemnification.

[60 FR 42466, Aug. 16, 1995]

### § 1160.5 Application for indemnification.

An applicant for an indemnity shall submit an Application for Indemnification, addressed to the Indemnity Administrator, National Endowment for the Arts, Washington, DC 20506, which shall be described as fully as possible:

(a) The time, place, nature and Project Director/Curator of the exhibition for which the indemnity is sought;

(b) Evidence that the owner and present possessor are willing to lend the eligible items, and both are prepared to be bound by the terms of the indemnity agreement;

(c) The total value of all items to be indemnified, including a description of each item to be covered by the agreement and each item's value;

(d) The source of valuations of each item, plus an opinion by a disinterested

third party of the valuations established by lenders;

(e) The significance, and the educational, cultural, historical, or scientific value of the items to be indemnified, and of the exhibition as a whole;

(f) Statements describing policies, procedures, techniques, and methods to be employed with respect to:

(1) Packing of items at the premises of, or the place designated by the lender;

(2) Shipping arrangements;

(3) Condition reports at lender's location;

(4) Condition reports at borrower's location;

(5) Condition reports upon return of items to lender's location;

(6) Security during the exhibition and security during transportation, including couriers were applicable;

(7) Maximum values to be transported in a single vehicle of transport.

(g) Insurance arrangements, if any, which are proposed to cover the deductible amount provided by law or the excess over the amount indemnified;

(h) Any loss incurred by the indemnitee or participating institutions during the three years prior to the Application for Indemnification which involved a borrowed or loaned item(s) or item(s) in their permanent collections where the amount of loss or damage exceeded \$5,000. Details should include the date of loss, nature and cause of damage, and appraised value of the damaged item(s) both before and after loss;

(i) If the application is for an exhibition of loans from the United States, which are being shown outside the United States, the applicant should describe in detail the nature of the exchange of exhibitions of which it is a part if any, including all circumstances surrounding the exhibition being shown in the United States, with particular emphasis on facts concerning insurance or indemnity arrangements.

(j) Upon proper submission of the above required information an application will be selected or rejected for indemnification by the Council. The review criteria include: