

## Indiana Appellate Court Rules That Hacking Losses Are Not Covered By Policy, But That Insurer's Assurances In Promotional Materials Create Issues Of Fact As To Coverage

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An Indiana appellate court ruled that financial losses caused by computer hackers were not covered by a crime policy's forgery or theft provisions, but that statements relating to cyber coverage in the insurer's promotional materials create an issue of fact as to coverage by estoppel. *Metal Pro Roofing, LLC v. Cincinnati Ins. Co.*, 2019 WL 3756738 (Ind. Ct. App. Aug. 9, 2019).

After computer hackers stole funds from Metal Pro's bank accounts, the company sought coverage under a crime policy. The insurer denied coverage on the grounds that the hacking activities did not fall within the forgery or theft provisions. A trial court agreed and dismissed Metal Pro's breach of contract claim. However, the court allowed a bad faith claim to proceed based on alleged misrepresentations made by the insurer relating to the scope of computer hacking coverage. Metal Pro alleged that statements in the insurer's coverage quotes created a reasonable belief that the policy would cover hacking losses. In response, the insurer argued that even if the representations could be interpreted to assure coverage, any reasonable reliance was negated by an express disclaimer stating that "This is not a policy. For a complete statement of the coverages and exclusions, please see the policy contract."

The trial court dismissed the bad faith claim. It reasoned that although language in the promotional material could be interpreted as a misleading representation of coverage, the claim nonetheless failed because Metal Pro did not rely on the document. The trial court held that any purported reliance was negated by deposition testimony indicating that Metal Pro did not read the policy until after coverage was denied.

The appellate court affirmed in part and reversed in part. The appellate court affirmed that computer hacking losses were not covered by the forgery or theft provisions of the policy. As to the bad faith claim, the appellate court held that the explicit reference to "computer hackers" in the promotional material and its assurance of "peace of mind with Cincinnati's crime coverage to insure the money and securities you worked so hard to earn" created a reasonable expectation of coverage for computer hacking loss. The appellate court ruled that the trial court erred in finding a lack of reliance, noting that although Metal Pro conceded that it did not read the policy initially, it did allegedly read (and rely on) the descriptive statements in the coverage quotes. Finally, the court held that the question of whether the disclaimer "neutralizes otherwise misleading quote language" is one for the finder of fact.

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