

Forgery Or Alteration Provision Does Not Cover Losses Arising From Fraudulent Wire Transfers, Says Pennsylvania Court

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A Pennsylvania federal district court ruled that losses stemming from fraudulent wire transfers initiated by hackers were not covered by a forgery or alteration provision in a commercial liability policy. *Ryeco, LLC v. Selective Ins. Co.*, 2021 WL 1923028 (E.D. Pa. May 13, 2021).

Hackers accessed Ryeco's computer system and instructed the company's bank to wire transfer more than \$1 million to the hackers' accounts. The hackers sent fraudulent emails and fraudulent wire transfer authorization forms that contained the signatures of the company's officers, which had presumably been copied from prior, legitimate wire transfer forms. Ryeco sought coverage from Selective Insurance under a policy provision that covered loss "resulting directly from 'forgery' or alteration of checks, drafts, promissory notes, or other similar written promises, orders or directions to pay a sum certain in 'money.'" Selective denied coverage and Ryeco sued, alleging breach of contract and bad faith. The court granted the insurer's summary judgment motion.

As the court noted, numerous other courts have rejected policyholders' attempts to obtain coverage under forgery or alteration provisions for wire transfer losses stemming from phishing schemes or other incidents of cyber fraud. Those courts have reasoned that fraudulent emails that contain wire transfer instructions do not constitute a check, promissory note or other "similar written promise" to pay a sum certain. Ryeco argued that those cases were distinguishable because the fraudulent instructions at issue were conveyed in emails as well as official wire transfer authorization forms. The court rejected this assertion, explaining that the forms were "like an email" and not the type of negotiable instrument listed in the forgery and alteration provision.

In addition, the court emphasized that Ryeco declined fund transfer fraud coverage, which both parties conceded would have applied to the losses at issue. That provision expressly applied to written instructions "other than those described in the [forgery or alteration] provision."



