

Fifth Circuit Affirms Coverage Denial For Phishing Loss, Finding That Policyholder Did Not “Hold” Lost Funds (Insurance Law Alert)

01.31.22



(Article from *Insurance Law Alert*, January 2022)

For more information, please visit the [Insurance Law Alert Resource Center](#).

Our [March 2021 Alert](#) reported on a Texas district court decision holding that losses incurred through a phishing scheme were not covered by a commercial crime policy because the policyholder never had ownership of the lost funds. Last month, the Fifth Circuit affirmed that holding, ruling that the policy was unambiguous and that there was no coverage as a matter of law. *RealPage, Inc. v. National Union Fire Ins. Co. of Pittsburgh, PA*, 21 F.4th 294 (5th Cir. 2021).

RealPage, a provider of online rent collection services, contracted with Stripe, a software company, to facilitate its payment-processing services. Under the contract, Stripe processed payments from renters through its bank account and then forwarded those payments to RealPage’s clients. Criminals used a phishing scheme to access the Stripe dashboard and alter fund disbursement instructions. As a result, the criminals diverted more than \$10 million. RealPage reimbursed its clients for the lost funds it was unable to recover and then sought insurance coverage. The insurers denied coverage and moved for summary judgment. The district court granted the motion and the Fifth Circuit affirmed.

The policy limited coverage to property “that you own or lease” or “that you hold for others whether or not you are legally liable for the loss of such property.” RealPage conceded that it did not own or lease the funds that were designated for its property management clients, but argued that it “held” the funds for purposes of policy coverage. Rejecting this assertion, the Fifth Circuit explained:

Essentially, RealPage provided routing instructions to Stripe, and Stripe effectuated the transactions and handled the funds transferred from tenants to property managers. Under any definition of “hold” that entails “keep[ing] in custody” or “possession,” RealPage cannot claim a loss under National Union’s policy because RealPage never “held” the funds intended for its property manager clients.

The court also rejected RealPage’s contention that “hold” was ambiguous and could be interpreted to mean “control” over funds. Further, the court noted that even accepting RealPage’s conflation of “hold” with “control,” there would still be no coverage because all funds were deposited in pooled clearing accounts controlled by Stripe.

Authors and Contacts

[Bryce Friedman](#)

Partner

bfriedman@stblaw.com

+1-212-455-2235

