

Texas Appellate Court Rules That Voluntary Parting Exclusion Does Not Bar Coverage For Fraudulent Email Scam Losses (Insurance Law Alert)

06.30.22



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

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

A Texas appellate court ruled that a voluntary parting exclusion does not bar coverage for losses stemming from an email impersonation scheme because it conflicts with a coverage endorsement in the policy. *Cent. Mut. Ins. Co. v. Reliance Prop. Mgmt., Inc.*, 2022 WL 1657031 (Tex. Ct. App. May 25, 2022).

Reliance was the victim of an email scam in which a fraudster impersonated a company employee and requested wire transfers. Central Mutual Insurance denied coverage for the loss, citing a voluntary parting exclusion, which applied to loss resulting from the “[v]oluntary parting with any property . . . if induced to do so by any fraudulent scheme, trick, device or false pretense.” In a subsequent trial, a jury entered a special verdict finding, among other things, that Reliance’s loss resulted from the voluntary parting of property induced by a fraudulent scheme. Nonetheless, the jury also found that Reliance was entitled to \$25,000 based on Central’s violation of its duty of faith and fair dealing. After a post-verdict hearing, the court awarded Reliance \$220,000 for its principal loss and \$25,000 in damages for the violation of good faith. The appellate court affirmed in part and reversed in part.

The appellate court concluded that the voluntary parting exclusion could not be reconciled with an endorsement in the policy that provided coverage for various fraud-based crimes. The court noted that the endorsement expressly modified the “Causes of Loss” form in which the voluntary parting exclusion was located, followed by only a general statement that all other limitations or exclusions apply. As such, the appellate court ruled that the trial court correctly disregarded the jury’s verdict response as to the voluntary parting exclusion. As discussed in our [January 2019](#) and [March 2020](#) Alerts, a few other courts have addressed application of a voluntary parting exclusion to cyber fraud-related losses, with one court enforcing the exclusion to bar coverage and the other deeming it ambiguous.

The appellate court also addressed a forgery provision that applied to the forgery or alteration of “checks, drafts, promissory notes, or similar written promises, orders or directions to pay a sum certain in ‘money.’” The court concluded that this language was broad enough to encompass fraudulent emails and wire transfer instructions. This conclusion runs counter to the vast majority of decisions in this context; most courts have concluded that impersonated email messages and corresponding wire transfer instructions are not negotiable instruments within the meaning of a forgery provision.

Finally, the court reversed the \$25,000 damage award, finding that the record was devoid of evidence to support a finding of bad faith.

Authors and
Contacts

Bryce Friedman
Partner
bfriedman@stblaw.com
[+1-212-455-2235](tel:+12124552235)

