

Eleventh Circuit Says Deceptive Transfer Fraud Provision Does Not Provide Coverage For Loss Stemming From Email Impersonation Scheme (Insurance Law Alert)

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Affirming a Florida district court decision, the Eleventh Circuit ruled that an insurer had no duty to indemnify wire transfer losses stemming from an email impersonation scheme. *Star Title Partners of Palm Harbor, LLC v. Illinois Union Ins. Co.*, 2022 WL 4075048 (11th Cir. Sept. 6, 2022).

Star Title, a settlement agent, clears title for property to be sold and distributes funds at closing. For the sale in question, the seller identified Capital Mortgage Services (“CMS”) as its lender and lienholder. The fraud arose when a fraudster purporting to be a CMS representative contacted Star Title and provided payment instructions. When Star Title realized it was the victim of an email impersonation scheme, it sought coverage for losses incurred as the result of a wire transfer.

The operative policy clause provided coverage for the loss of funds resulting from the intentional misleading of an employee . . . “sent by a person purporting to be an employee, customer, client or vendor.” The Eleventh Circuit ruled that coverage was unavailable because CMS was not a customer, client or vendor of Star Title. The court reasoned that “Star Title does not employ CMS for any purpose or control CMS’ work performance in any manner. Nor does Star Title sell CMS any particular product or provide it any particular service.”

Star Title argued that CMS should be considered a client or customer because Star Title provided a service to CMS by holding payoff funds in escrow and delivering those funds to CMS on behalf of sellers. Rejecting this assertion, the court explained that Star Title’s customer/client was the seller, not CMS.

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