

Exclusion Barred Coverage of Losses Resulting from Fraudulent Email Scheme, Ninth Circuit Concludes

The U.S. Court of Appeals for the Ninth Circuit has ruled that an exclusion in an insurance policy precluded coverage for an insured's losses stemming from a fraudulent email scheme.

The Case

The insured sued its insurer, seeking coverage for "computer fraud" under its insurance policy. The insured allegedly had suffered a loss as a result of a fraudulent email scheme that caused its employees to change account information to a fraudster's account and then to wire four payments to that account.

The U.S. District Court for the Western District of Washington granted summary judgment to the insurer, and the dispute reached the Ninth Circuit.

The Ninth Circuit's Decision

The circuit court affirmed.

In its decision, the Ninth Circuit ruled that, even assuming without deciding that the policy generally covered the kind of computer fraud that had caused the insured's losses, coverage was foreclosed.

The circuit court observed that Exclusion G provided that the policy "will not apply to loss or damages resulting directly or indirectly from the input of Electronic Data by a natural person having the authority to enter the Insured's Computer System. . . ."

Here, the circuit court explained, the insured's losses resulted from employees authorized to enter its computer system changing wiring information and sending four payments to the fraudster's account. These employees "ha[d] the authority to enter" the insured's system when they "input" electronic data, on the insured's computers, to change the wiring information and to authorize the four wire transfers, the Ninth Circuit said.

Their conduct, the circuit court held, fit "squarely" within the exclusion.

The Ninth Circuit rejected the insured's argument that it was entitled to coverage as a result of the rule of efficient proximate cause. That rule, the circuit court said, could be applied only when two or more *perils* combined in sequence to cause a loss and a *covered peril* was the predominant or efficient cause of the loss. Here, it concluded, there was only one "peril" – computer fraud – so the rule of efficient proximate cause did not apply.

The case is *Aqua Star (USA) Corp. v. Travelers Casualty and Surety Company of America*, No. 16-35614 (9th Cir. Apr. 17, 2018).



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