

The Docket: U.S. District Court Holds Voluntary Parting Exclusion Bars Coverage for Social Engineering Scheme

Description

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The Docket is a monthly TitleNews Online feature provided by ALTA's Title Counsel Committee that reviews significant court rulings and other legal developments, and explains the relevance to the title insurance industry.

Stephen Gregory, underwriting counsel for WFG National Title Insurance Co., provided today's review of a decision by the U.S. District Court in Virginia that held a "voluntary parting" exclusion provision in a crime policy should exclude coverage for a fraudulent transfer social engineering scheme. Gregory may be reached at sgregory@wfgnationaltitle.com.

Citation: *Midlothian Enterprises, Inc., v. Owners Insurance Company*, __ F.Supp. __ 2020 WL 836832 (February 20, 2020) United States District Court, E.D. Virginia

Facts: Midlothian purchased a business insurance policy from Owners Insurance Co. The policy was amended by various endorsements that addressed potential losses of funds, including "forgery or alteration" coverage for checks "made or drawn by or drawn upon you;" "made or drawn by one acting as your agent;" However, the policy endorsements excluded coverage for "loss resulting from your, or anyone acting on your express or implied authority, being induced by any dishonest act to voluntarily part with title to or possession of any property."

In October 2018, JoAnne Davis, an employee of Midlothian received an email from Midlothian president E. Bryce Powell, asking her to wire thousands of dollars from Midlothian's bank account to a bank account in Alabama. As part of her job, Davis would wire money from Midlothian's bank account to other bank accounts when Powell asked her to do so. Thus, believing that Powell had sent the email, Davis wired \$42,302.46 to a bank account in Alabama. After she wired the funds, Midlothian discovered that hackers, not Powell, had sent Davis the email and had stolen the money. Midlothian submitted a claim to Owners asking the insurance company to cover the loss under its insurance policy. Owners denied coverage.

Holding: Midlothian advanced a multi-pronged argument that the loss should be covered. The court first rejected the contention that the language in the exclusion was ambiguous. Second, the court rejected Midlothian's reliance on *Elam v. Ford*, 145 Va. 536 (1926) that the victim of an act of fraud cannot be deemed to have voluntarily parted with title to or possession of property. Finally, the court rejected (as leading to absurd results) Midlothian's contention that Davis did not act with Powell's express or implied authority because Powell did not send the email. The court stated that the policy exclusion applies to a "voluntary parting" induced by any dishonest act and a fraudulently authorized transaction would fall within that definition.

The court thus ruled in favor of Owners Insurance Company.

Importance to the Title Industry: Although this case did not arise in the real estate industry, many title agents have purchased cybersecurity insurance because of the prevalence of cyberfraud. It's critical that potential insureds under such policies read and understand all provisions related to coverage for such acts and, if necessary, negotiate desired terms prior to purchase of such policies.

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Category

1. Uncategorized

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