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Insurance Coverage Law Center: Litigation Trends in Cyber Coverage for Wire Fraud

Companies increasingly face the rampant threat of wire fraud. Wire fraud typically occurs where cyber criminals pose as legitimate persons of authority, such as a high-ranking company executive, a vendor, or a customer, and trick the business into wiring money to the fraudster's bank accounts. Businesses targeted by such attacks often turn to their insurance companies to recover their resulting losses.

Previously, courts across the country overwhelmingly found that such attacks were covered under "Computer Fraud" provisions, which commonly appear in crime and cyber policies, such as those in Principle Solutions Group LLC v. Ironshore Indemnity, Inc., 944 F.3d 886 (11th Cir. 2019; Medidata Solutions Inc. v. Federal Insurance Co., 729 Fed. App'x 117 (2d Cir. 2018); and American Tooling Center, Inc. v. Travelers Casualty & Surety Co. of American, 895 F.3d 455 (6th Cir. 2018). In finding coverage for wire fraud, these Circuit Court decisions rejected the argument frequently made by insurers that the actions of an insured's employees, deceived by the fraudster into making a transfer, break the causal chain between the fraudster's use of a computer and the insured's losses.

Recently, the Ninth Circuit followed this rule in Ernst & Haas Management Company, Inc. v. Hiscox, Inc., 23 F.4th 1195 (9th Cir. 2022). There, a property management company suffered $200,000 in losses after an employee was tricked by a fraudster posing as one of the company's founders. The Ninth Circuit held that the losses from the wire fraud were covered under both "Computer Fraud" and "Funds

Transfer Fraud" insuring agreements in the policy and found that the losses resulted directly from the computer fraud.

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