TRAUB LIEBERMAN

CYBER LAW BLOG

March 20, 2020

“Voluntary Parting” Exclusion Bars Coverage for Fraudulent Email Scam

BY: Jason Taylor

In *Midlothian Enterprises, Inc. v. Owners Ins. Co.*, 2020 WL 836832 (E.D. Va. Feb. 20, 2020) a Virginia federal court addressed whether a “voluntary parting” exclusion precluded coverage for the loss of funds transferred as a result of a fraudulent email scam. In what has become an all-to-common scheme, fraudsters sent an email to a Midlothian employee, JoAnne Davis, from the email account appearing to be from Midlothian president and shareholder, E. Bryce Powell. The email instructed Davis to purchase a subscription and membership interest in a “Fanalter LLC.” The employee, in the past, had regularly wired money to different accounts at the request of Powell. Believing that the email was in fact from Powell, Davis wired $42,302.46 to an Alabama bank account. Shortly after the wire transfer was complete, Midlothian discovered the fraudulent email scam and realized that the money had been stolen from the Alabama account.

Midlothian had an insurance policy from Owners Insurance Company effective May 1, 2018, through May 1, 2019. The standard policy did not cover “[a]ccounts, bills, currency, food stamps[,] or other evidences of debt, money, notes[,] or securities.” Midlothian, however, purchased endorsements to supplement the standard policy, including a “money and securities endorsement.” Owners agreed that the money and securities endorsement applied to the loss of money, but denied coverage under the endorsement’s “voluntary parting” exclusion. Under the voluntary parting exclusion, Owners did not cover “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.”

The District Court found that the plain language of the voluntary parting exclusion unambiguously included the fraudulent email and subsequent transfer. The court reasoned that Davis made similar transfers when instructed to do so by Powell, and therefore, had the authority to do so within Midlothian’s normal business practices. Although Powell did not make the request, that did not change the voluntariness of the transfer itself. Davis freely transferred the money after believing she was instructed to do so by Powell. The exclusion applied to *any* voluntary parting induced by *any* dishonest act. The District Court reasoned that fraud would certainly fall within the broad meaning of “any dishonest act.”

In arguing that the exclusion should not apply, Midlothian contended that as a victim of fraud, it could not be deemed to have consented to or voluntarily parted with title or possession of the property. The District Court, however, distinguished case law cited by Midlothian clarifying that earlier case law did not provide a broad rule that a victim of fraud can never act voluntarily. Similarly, Midlothian argued that Davis did not have express or implied authority to make the wire transfer, because Powell, her boss, did not actually send the email. Again, the District Court disagreed. According to the court, “[t]his broad exclusion plainly contemplates a fraudulently authorized transaction, one form of a dishonest act. Allowing coverage of a fraudulently authorized transaction despite an exclusion based on *‘any* dishonest act’ would unreasonably limit the exclusion and render the provision meaningless.”