

A Trap for the Unwary: Cyber Insurance Policies and Phishing Attacks

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Cybersecurity and cybercrime pose concerns for individuals and businesses alike. Consequently, many choose to purchase cyber insurance to protect against cyber risks. However, insureds may find themselves helpless concerning certain cyber losses if they do not thoroughly familiarize themselves with their cyber insurance policies.

“Phishing” attacks have become increasingly common in recent years. In fact, the Eleventh Circuit Court of Appeals is considering an appeal concerning whether a cyber insurance policy covers losses caused by phishing attacks. In that case, a real estate title company’s employees were deceived by a scammer who pretended to be a mortgage company. In doing what the employees harmlessly thought was their job, the employees wired money to the fake mortgage company, and the scammer proceeded to divert these funds. The employees allegedly did not authenticate wire instructions.

The lower court held that the real estate title company’s cyber insurance policy did not cover the diversion of company funds because the wire fraud did not directly involve the insured’s employees, customers, clients, or vendors—all of which the policy may have covered. Rather, the fraud involved a third party that the court thought was not described in the policy’s language concerning wire fraud.

The real estate title company asked the Eleventh Circuit Court of Appeals to review the lower court’s holding. By way of its review, the Eleventh Circuit may consider sub-issues such as (1) whether the employees’ failure to authenticate wire instructions precludes coverage, regardless of which parties were involved in the wire fraud; and (2) whether the cyber policy covers losses from wire transfers sent to individuals posing as “financial institutions” or as a representative or agent thereof. As one may imagine, the real estate title company and the insurer offer differing arguments regarding these issues.

Whatever the outcome of the appeal, this case demonstrates the importance of knowing the kind and limitations of one’s cyber insurance coverage—especially if you are a company whose business regularly requires wire transfers.

For more information on the appeal and information relating to cyber insurance, see [this article](#).