

THOUGHT LEADERSHIP

News

FEDERAL COURT GRANTS SUMMARY JUDGMENT FOR INSURER ON COMMERCIAL CYBER POLICY – BELIEVED TO BE THE FIRST MAJOR RULING ON THIS COVERAGE

Newsbrief

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Last week a federal District Court in Dallas granted the insurer's motion for Summary Judgment on all issues related to claims made on a cyber policy. At the same time the Court denied the plaintiffs partial motion for summary judgment in *Southwest Airlines Co., v. Liberty Insurance Underwriters, Inc.*, 3:19-CV-2218-C (N.D. Tex., September 6, 2022, mem. Op.)

It is well known that Southwest Airlines experienced an electronic systems failure in July 2016 that caused the cancellation of thousands of flights. Southwest Airlines sought recovery for a variety of business interruption expenses. As part of this claim Southwest also sought the recovery for a variety of items given to customers including frequent flyer miles, discount codes, and vouchers. At the time of the system failure, Southwest was insured by a tower of coverage under a specialty risk policy that included a System Failure Coverage Endorsement – sometimes referred to as a cyber policy.

Liberty was one of the excess insurers and moved for summary judgment arguing that a significant percentage of Southwest's claim for system failure losses was outside the "System Failure Coverage" language, and thus was not a "Loss" under the Policy. This was because, in part, a substantial part of Southwest's claim for system failure damages fell within the Exclusions of the Policy for 1) Consequential Damages, 2) Liability to Third Parties, or 3) Unfavorable Business Conditions.

The Court ruled the coverage that Southwest sought does not exist as a matter of law. This was, in part, because the system failure claim did not exceed the layers of coverage under Liberty's layer in the tower of coverage. The Court ruled enough of Southwest's system failure claim fell within one or more of the policy exclusions to preclude coverage. And in the absence of coverage, the breach of contract claim failed as a matter of law. And the Plaintiff's bad faith causes of action failed because coverage never became reasonably clear, there was a bona fide dispute, and there is an absence of damages beyond the alleged contract damages.

Editor's Note: To our knowledge this is the first ruling on the substance of what is covered under a System Failure Coverage Endorsement in the airline context. MDJW takes this opportunity to congratulate our client team at Liberty

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Mutual for granting us the privilege to represent them in this case. We also congratulate the firm Partners who have led our defense of this case for the last three years: Chris Martin, Brad Allen and Melinda Burke.