

2025 WL 3684068 (C.A.7) (Appellate Brief)
United States Court of Appeals, Seventh Circuit.

OFFICE OF THE SPECIAL DEPUTY RECEIVER, Plaintiff-Appellant,
v.
HARTFORD FIRE INSURANCE COMPANY, Defendant-Appellee.

No. 25-2309.
December 11, 2025.

On Appeal from the United States District Court for the Northern District of Illinois
No. 1:22-cv-03709
Hon. Andrea R. Wood

Brief and Required Short Appendix of Appellant Office of the Special Deputy Receiver

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**JURISDICTIONAL STATEMENT**

The District Court had jurisdiction over this case under [28 U.S.C. § 1332](#) because the case is between citizens of different States and the amount in controversy exceeds \$75,000 exclusive of interest and costs. Plaintiff-Appellant Office of the Special Deputy Receiver is an Illinois not-for-profit corporation operating under Article XIII of the Illinois Insurance Code, [215 ILCS § 5/187 et seq.](#), with its principal place of business in Illinois. Defendant-Appellee Hartford Fire Insurance Company is a mutual insurance company organized under the laws of the State of Connecticut, with its principal place of business in the State of Connecticut.

The Court of Appeals has jurisdiction in this case pursuant to [28 U.S.C. § 1291](#) because Plaintiff appeals from a final judgment of the District Court. Plaintiff-Appellant seeks review of the Memorandum Opinion and Order granting Defendant-Appellee Hartford Fire Insurance Company's Motion to Dismiss. Short Appendix (“*App.*”) 1-19, entered on March 31, 2025.<sup>1</sup> That Order was not a final judgment when the District Court initially entered it because it denied the motion to dismiss filed by another party, former Defendant HSB Specialty Insurance Company. Therefore, that Order was not initially a final judgment. [Fed. R. Civ. P. 54\(b\)](#). However, the District Court later dismissed Plaintiff-Appellant's claims against former Defendant HSB Specialty Insurance Company with prejudice and entered final judgment. App. 20, entered on July 8, 2025. Therefore, the Order became final on July 8, 2025, as no other claims or parties remained in the case. *See* [Fed. R. Civ. P. 54\(b\)](#). Plaintiff-Appellant \*2 filed a Notice of Appeal from the Order on July 21, 2025, within the time allotted by the Rules. [Fed. R. App. P. 4\(a\)](#).

**STATEMENT OF THE ISSUE**

Did the District Court make an error of law when it interpreted a financial institution bond containing a “Computer Systems Fraud Insuring Agreement” as allowing an insurer to deny coverage for losses arising from the fraudulent infiltration of Plaintiff-Appellant's computer system and impersonation of Plaintiff-Appellant's officer to deceive Plaintiff-Appellant's employees?

**STATEMENT OF THE CASE**

**I. Factual Background**

Plaintiff-Appellant Office of the Special Deputy Receiver (“OSD”)<sup>2</sup> is an Illinois not-for-profit corporation that administers the receivership estates for insolvent or financially troubled Illinois insurance companies, including commercial auto insurer Gateway Insurance Company (“Gateway”) and personal auto insurer Affirmative Insurance Company (“Affirmative”).

OSD purchased a “Financial Institution Bond for Insurance Companies” (“*the Bond*”) from Appellee Hartford Fire Insurance Company (“Hartford”) covering events between May 27, 2021, and May 27, 2022. Complaint (“Compl.”), ECF 1 at PageID #:32. The Bond contains Riders, agreements that add coverages to the Bond. Those \*3 Riders can require OSD to follow certain procedures to receive compensation for the coverage provided by the Rider. They can also contain “exclusions,” which specify scenarios under which the Rider does not provide OSD coverage.

Rider 13, the “Computer Systems Fraud Insuring Agreement,” provides OSD coverage for “[l]oss resulting directly from a fraudulent entry of Electronic Data or Computer Program into, or change of Electronic Data or Computer Program within any Computer System operated by the Insured.” *Id.* at PageID #:67.

### **A. The Computer Fraud Scheme**

Around June 17, 2021, unknown fraudsters hacked OSD's Chief Financial Officer's internal OSD email account via a “spear phishing” attack, in which they tricked the CFO into giving them his Microsoft Outlook password by emailing him a fake login portal. This gave the fraudsters unauthorized access to the CFO's email, a component of OSD's information technology infrastructure.

With that access, the fraudsters directly altered the CFO's email inbox rules to allow them to read and divert incoming emails before the CFO could read them. The intruders combined this access and rule modification with a domain-squatting scheme, registering dummy email addresses with domains like those of OSD. *See id.* at PageID #:176-77. This allowed the fraudsters to conceal their access to the CFO's account and communicate internally as the CFO to OSD employees.

With their fraudulent access to the CFO's internal OSD email account, the fraudsters instructed OSD's Controller and Assistant Controller (using intraoffice email from the CFO's account) to execute eight wires of funds from the liquidation accounts of Gateway and Affirmative to accounts at the Bank of China HK, Standard \*4 Chartered Bank, and HSBC Bank Singapore. In total, OSD wired \$6,849,228 to these accounts; it later recovered \$2,870,500 of those funds from its bank.

### **B. Hartford Denies OSD's Claim.**

Following the fraud, OSD (through its insurance broker) filed a claim for coverage with Hartford. On May 6, 2022, Hartford declined to pay, concluding that the events did not qualify for coverage under Rider 13 of the Bond - the Computer Systems Fraud Rider - because, as relevant to this appeal, Hartford believed the “loss result[e]d directly or indirectly from the Insured having, in good faith, transferred or delivered Funds, ... in reliance upon a fraudulent instruction *sent to the Insured* through electronic mail, except when [otherwise covered by Rider 17],” the “Electronic Mail Initiated Transfer Fraud” Rider. *Id.* at PageID #:239 (emphasis added).

## **II. OSD's Suit and the District Court's Dismissal**

OSD sued Hartford in September 2022 in the Northern District of Illinois, seeking a declaratory judgment that the Bond provided coverage for damages caused by the spear phishing attack (the monies lost in the transfers). Hartford moved to dismiss, arguing exclusively that the Email Fraud Exclusion in Rider 17 barred OSD's claims. Hartford did not assert any other bars to coverage in its motion to dismiss. OSD argued in response that the exclusion in Rider 17 did not modify the coverage provided under Rider 13. Instead, the provisions should be read independently, so Rider 17's exclusion did not preclude coverage under Rider 13.

The District Court granted Hartford's motion to dismiss, holding that the exclusion in Rider 17 modified the entire Bond and, therefore, applied equally to Rider \*5 13. The District Court concluded that “OSD has alleged facts that fall squarely within the unambiguous exception found in Rider 17 and bar coverage.”<sup>3</sup> App. 12.

## SUMMARY OF THE ARGUMENT

There is no dispute that the plain language of Rider 13, the Computer Systems Fraud Rider, of the Hartford Bond provides coverage for the losses OSD suffered from a spear phishing fraud perpetrated against it. The spear phishing hack is directly within the unambiguous scope of Rider 13's coverage. However, the District Court incorrectly found that Hartford withdrew the coverage it provided under Rider 13 through an exclusion in a different Rider (Rider 17). That ruling misreads the Bond.

Rider 17, the Electronic Mail Initiated Transfer Fraud Rider, is irrelevant to OSD's insurance claim. Rider 17 provides coverage when a fraudster impersonates an OSD customer and convinces OSD, via instructions “sent to” OSD as “the Insured,” to transfer that customer's funds for the fraudster's interception. As a condition of this coverage, Rider 17 required that OSD follow specific security protocols before transferring funds on the authority of a customer's email. The Rider also contains an exclusion precluding coverage for all losses caused by a “fraudulent instruction sent to the Insured” via email. Compl. at PageID #:105 (emphasis added). The District Court held that OSD's failure to follow these security protocols here forfeited its coverage via that exclusion.

\*6 However, the spear phishing scheme did not fall within the scope of Rider 17, as it did not involve any email “sent to” OSD; only emails sent *within* OSD. The fraudsters did not send the wire instructions *to* OSD. Therefore, OSD was not required to comply with the requirements of Rider 17's coverage; the Rider does not apply here *at all*.

By importing inapplicable requirements and exclusions to coverage from Rider 17 into Rider 13, the District Court created conflict between the Bond's provisions. Even if that interpretation were plausible, it would create contractual ambiguity. Under the federal courts' application of Illinois law, ambiguity in an insurance contract creates a factual dispute and cannot serve as the basis for a District Court's dismissal on the pleadings.

This Court should reverse and remand for further proceedings.

## STANDARD OF REVIEW

“Under Illinois law, the general rules of contract interpretation control interpretation of insurance policies, which are contracts.” *AFM Mattress Co., LLC v. Motorists Com. Mut. Ins. Co.*, 37 F.4th 440, 443 (7th Cir. 2022). This Court “review[s] questions of contract interpretation with a fresh set of eyes independent of the district court's analysis.” *Consol. Grain & Barge Co. v. Indiana Port Comm'n*, 107 F.4th 684, 688 (7th Cir. 2024).

## ARGUMENT

The District Court in this case erred when it held that OSD's claim was not covered by Rider 13 of the Bond because of an exception in Rider 17. When read correctly, Rider 17's coverages and exceptions do not apply at all to the “spear phishing” \*7 computer fraud at issue here. Through its misinterpretation of the Bond as a whole, the District Court created unjustified ambiguities that cannot form the basis of its dismissal.

This Court should reverse the District Court's order because of these legal errors and remand this case for further proceedings.

**I. Rider 13, the Computer Systems Fraud Rider, Applies Here to Provide Coverage for OSD's Claim Resulting from the Spear Phishing Fraud.**

Rider 13 provides coverage for:

Loss resulting directly from a fraudulent

(1) entry of Electronic Data or Computer Program into, or

(2) change of Electronic Data or Computer Program within

any Computer System operated by the Insured ... provided that the entry or change causes

(i) Property to be transferred, paid or delivered,

(ii) an account of the Insured ... to be added, deleted, debited or credited, or

(iii) an unauthorized account or a fictitious account to be debited or credited.

Compl. at PageID #:67. No one below, neither Hartford nor the District Court, disputed that the coverage provided by Rider 13 applies here. The plain language affirms that OSD specifically purchased coverage for a fraudulent hack like the one that occurred here.

The spear phishing attack is perfectly within the coverage provided by Rider 13. The hacker “fraudulent[ly] ent[ered]” into the CFO’s email account. The thief then used that fraudulent entry to initiate unauthorized fund transfers (i.e., the “account \*8 of the Insured” was “debited” and the fraudster’s “unauthorized account [was] credited.” *Id.* The computer system was also “change [d],” because the fraudster altered the CFO’s computer (by changing the rules of his email program) to avoid detection. Compl. ¶ 17.

There is no dispute that the loss was caused “directly” by the hack. As the District Court explained in reviewing the policy of Hartford’s former co-defendant below, the word “directly” applies with full force to the facts alleged here. “[S]everal courts have found that ‘direct loss’ does not require that the underlying computer crime (or computer fraud, as some contracts call it) be the sole cause of the loss.” App. 13 (citing *Ernst & Haas Mgmt. Co., Inc. v. Hiscox, Inc.*, 23 F.4th 1195 (9th Cir. 2022)); see also *Am. Tooling Ctr., Inc. v. Travelers Cas. & Sur. Co. of Am.*, 895 F.3d 455, 461 (6th Cir. 2018) (cited in App. 13-14); *G&G Oil Co. of Indiana, Inc. v. Cont’l W. Ins. Co.*, 165 N.E.3d 82, 85 (Ind. 2021) (payment of ransom to hacker was sufficiently direct to be covered by a computer fraud policy requiring “resulting directly from the use of any computer to fraudulently cause a transfer of that property”); cf. *Certain Underwriters at Lloyd’s, London v. Galey Consulting, LLC*, 2025 IL App (1st) 241909-U, ¶ 39, *appeal denied*, No. 132184, 2025 WL 3302606 (Ill. Nov. 26, 2025) (when an insurance agreement *excluded* coverage for losses arising from “cyber events,” the insurer does not have to provide coverage stemming from a spear phishing attack).

As the Seventh Circuit thoroughly explained in *First State Bank of Monticello v. Ohio Cas. Ins. Co.*, 555 F.3d 564 (7th Cir. 2009), it is inappropriate to import a tort- \*9 like proximate causation analysis when determining whether a bond (like the Bond here) covers a “direct” loss:

[The insurer’s] arguments about intervening or contributing causes - such as [the fraudster’s] death, his corporation’s bankruptcy, and the [insured’s] officers’ failure to follow [the insured’s] policy - do not make the [insured’s] loss from [the fraudster’s] false pretenses any less direct. We have already explained that tort concepts like contribution and intervening cause do not apply. Those events or omissions, standing

alone or in combination, did not cause the [insured's] loss in the sense meant by the bond; nor do they operate to make [the fraudster's] on-premises fraud merely an “indirect” cause of the [insured's] loss. *What is important is that without [the fraudster's] on-premises misconduct - without the false pretenses under which he tendered his checks - [the insured] would not have suffered a loss.* [The insured's] loss thus resulted “directly from” [the fraudster's] on-premises false pretenses, and there is coverage under Insuring Agreement B.

*Id.* at 571 (emphasis added); see also *id.* at 570-71 (analyzing inappropriate application of proximate causation standards to contract disputes) (citing *RBC Mortg. Co. v. Nat'l Union Fire Ins. Co. of Pittsburgh*, 349 Ill. App. 3d 706, 716 (1st Dist. 2004)).

Thus, the loss for which OSD sought coverage directly resulted from the fraudulent entry into, and changes to, OSD's computer system. This is precisely the coverage OSD bargained for when it purchased Rider 13. “[I]f Hartford wanted to limit coverage under [Rider 13] to just instances of brute force takeovers of computer systems ... Hartford could have drafted Rider 13 to convey such a significant limitation[ ] clearly to its insured.” OSD's Opp. to Hartford's MTD (“MTD Opp.”), ECF 31 at 13-14. Yet the District Court ignored Rider 13 entirely, holding that an exclusion in an unrelated Rider, Rider 17, negated the coverage provided by Rider 13.

**\*10 II. Rider 17, the Electronic Main Initiated Transfer Fraud Coverage Rider, Does Not Apply Because the Thief Did Not Send Fraudulent Transfer Instructions to OSD via Email.**

Contrary to Hartford's arguments and the District Court's conclusion, Rider 17 has no application to the facts alleged here by OSD. By its plain text, the Rider does not provide coverage to OSD for the alleged spear phishing attack; its requirements for coverage and exclusions do not apply either. And beyond the narrow text of Rider 17, the District Court violated basic rules of construction by reading Rider 17 to nullify the coverage expressly provided by Rider 13. “Wherever possible, a court should construe a policy so as to harmonize its provisions and avoid reading an exclusion in such a way that it removes the coverage explicitly provided elsewhere in the policy.” *Citizens Ins. Co. of Am. v. Wynndalco Enters., LLC*, 70 F.4th 987, 996 (7th Cir. 2023). The District Court's failure to harmonize Riders 13 and 17 here requires reversal.

**A. Rider 17 Does Not Provide Coverage for OSD's Claim, as No Emails Impersonating Customers Were Sent to OSD.**

Rider 17 provides coverage for losses resulting from fraudsters impersonating OSD's customers (or their customers' agents) and sending fraudulent wire instructions to OSD. Rider 17 covers:

Loss resulting directly from the Insured having, in good faith, transferred or delivered Funds, Certificated Securities or Uncertificated Securities, in reliance upon a fraudulent instruction *sent to the Insured* through electronic mail, and:

(1) which fraudulent instruction purports and reasonably appears to have originated from:

(a) a *Customer* of the Insured, or

(b) an *Employee acting on instructions of such Customer*, or

**\*11** (c) another *financial institution acting on behalf of such Customer* with authority to make such instructions;

but, in fact, was not originated by the party referenced in (a) - (c) above whose identification it bears [...]

Compl. at PageID #:75 (emphasis added).

As the text of Rider 17 makes clear, it covers losses when OSD complies with fraudulent instructions from someone impersonating a customer or a customer's agent. The Rider, drafted by Hartford, is boilerplate: OSD, by its nature as a receiver for troubled insurance companies, does not have traditional “customers” like a typical business. OSD must implement particular controls for Rider 17's coverage to apply, such as verifying the “password(s), PIN(s), or other security code(s) of such Customer,” or confirming a wire instruction by using a code that OSD and the customer agreed to in advance. *Id.* Because the scam did not involve a pretend customer, none of the requirements are relevant; Rider 17's coverage is for an entirely different situation (that does not typically apply to OSD, whose “Director functions like a bankruptcy trustee” and who “marshals assets and distributes those assets to consumers and other creditors pursuant to statutory claim procedures.” See <https://www.osdchi.com/about.htm> (last visited Dec. 10, 2025).

When Rider 17 is read alongside Rider 13, the differences between their coverages are clear. Losses resulting from fraudulent entry into OSD's computer system, such as by using a spear phishing attack to hack into OSD's CFO's internal account, are covered by Rider 13. Losses resulting from a fraudster impersonating an OSD customer and inducing OSD to transfer funds via email are covered by Rider 17. Rider \*12 13 “is devoid of any reference whatsoever to” Rider 17. MTD Opp. at 11. The Riders' coverages do not overlap.

Rider 17 does not apply to the allegations in the Complaint. Most significantly, the fraudsters did not send any emails to OSD impersonating customers. The Complaint alleges that the thief entered the computer system and sent emails internally from within OSD. No one impersonated an external entity and sent OSD fraudulent wire instructions. Instead, a fraudster gained direct access to OSD's computer systems, impersonated an internal OSD officer with the authority to direct wire transfers, and internally directed OSD to complete wire transfers. Rider 17 is inapplicable.

**B. The District Court Erred When It Interpreted Rider 17's Exclusion to Deny Coverage Here Because OSD Never Received a Fraudulent Email Containing Transfer Instructions.**

Given that Rider 17 does not apply to the facts alleged here, the District Court erred when it found that an exception exclusive to Rider 17 precluded OSD's claim under Rider 13. But reading the exceptions in one Rider (which does not apply) to preclude coverage provided directly by another Rider is inconsistent with reading the Bond as a whole, as Illinois law requires: “To ascertain the meaning of the Bond's language and the parties' intent, the court must construe the policy as a whole.” *Ill. Cas. Co. v. W. Dundee China Palace Rest., Inc.*, 2015 IL App (2d) 150016 (citing *Travelers Ins. Co. v. Eljer Mfg., Inc.*, 197 Ill.2d 278 (2001)).

Rider 17 contains an exclusion to coverage:  
This bond does not cover:

loss resulting directly or indirectly from the Insured having, in good faith, transferred or delivered Funds, Certificated Securities or Uncertificated Securities, *in reliance* \*13 *upon a fraudulent instruction sent to the Insured* through electronic mail.

Compl. at PageID #:76 (emphasis added) Compl. at PageID #:76 (emphasis added). The District Court held that OSD “has pleaded facts that fall squarely within Rider 17's exclusion.” App. 11. Yet the District Court incongruously read the exclusion in Rider 17 to take away coverage provided by Rider 13. Under Illinois law, “[p]rovisions that limit or exclude coverage will be interpreted liberally *in the insured's favor and against the insurer.*” *Bowers v. Gen. Cas. Ins. Co.*, 2014 IL App (3d) 130655, ¶ 8 (emphasis added). “Reviewing courts must assume that every provision in an insurance policy was intended to serve a purpose and the policy is to be construed as a whole, giving effect to every provision, and taking into account the type of insurance provided, the nature of the risks involved, and the overall purpose of the contract.” *Dana v. Great N. Ins. Co.*, 2024 IL App (1st) 230224, ¶ 17 (cleaned up). But contrary to these black-letter rules for construing insurance contracts, the District Court's

interpretation expands one rider's exclusion to negate separate and distinct coverage that OSD paid for. This undermines the purpose of both Riders.

The text of the Rider 17 exclusion confirms that it has no application to a computer fraud claim covered by Rider 13. By its own terms, that exclusion applies when the insured relies “upon a fraudulent instruction *sent to the Insured* through electronic mail.” Compl. at PageID #:76 (emphasis added). This exclusion makes perfect sense when read in conjunction with Rider 17's coverage, which applies to communications “*to the insured*” from those impersonating customers. *Id.* at PageID #:75 (emphasis added). But here, OSD did not allege that fraudulent email instructions were sent *to* \*14 *the Insured*. Instead, it alleges that a thief gained access to the CFO's internal computer account and directed the transfer of funds from *within* OSD's own internal information technology system. The allegations are a quintessential computer fraud scheme as defined in Rider 13. No third party sent an email containing wire instructions to OSD here. Rider 17's exclusion, just as its coverage, does not apply here.

Finally, OSD's interpretation of Rider 17 (whose coverage and exclusion only applies when an email containing a wire instruction is sent *to* OSD from an outside party) is consistent with the language of other Riders. When Hartford, the drafter of the Bond, meant for coverage to apply to intra-OSD communications, it used clear language. In Rider 11, which provides coverage for “Telefacsimile Transfer Fraud,” Hartford was clear that it covered faxes sent to “another office of the Insured.” *Id.* at PageID #:63. Rider 12, which provides coverage for “Voice Initiated Transfer Fraud,” Hartford was clear that the coverage included “a fraudulent voice instruction transmitted by telephone which was purported to be from . . . an Employee of the Insured.” *Id.* at PageID #:65. Crucially, in contrast to these other Riders, Rider 17 contains no such language to indicate that its coverage or exclusions are intended to apply to intra-OSD emails. “If Hartford did not want to cover computer fraud accomplished via email and outside a customer rubric . . . it could have easily directly and explicitly stated such in [Rider 13].” MTD Opp. at 13. Hartford's current litigation position cannot trump the plain text of the Bond (which should be construed against it in any event, *see infra*).

\*15 The Bond is clear, and the District Court and Hartford are incorrect in their interpretation. Rider 13 provides coverage here. Rider 17 does not apply because no email containing fraudulent instructions was sent “to the Insured.” To hold otherwise would both defeat the purpose of Rider 13 and misinterpret Rider 17, rendering *both* internally inconsistent with other Riders in the Bond. This Court must reverse the District Court's dismissal.

### **III. The District Court's Interpretation of the Bond Needlessly Creates Ambiguity, Which, Under Illinois Law, Must Be Construed in OSD's Favor and Cannot Form the Basis of Dismissal.**

The correct interpretation of the Bond is not ambiguous: Rider 13 applies when a fraudster causes an insured's loss by accessing its internal computer systems, and Rider 17 applies when a fraudster causes a loss by pretending to be an insured's external customer and sending the insured wire instructions through email.<sup>4</sup>

The District Court's interpretation creates ambiguity and confusion. According to the District Court, Rider 13's coverage strangely depends on the method of computer fraud, as determined by exclusions in an otherwise irrelevant provision of the Bond. That kind of ambiguity, combining unnecessary cross-referencing with picayune variations in the method of computer fraud, is incorrect, cannot be resolved in Hartford's favor, and cannot be the basis for dismissal here. *Am. Standard Ins. Co. v. Allstate Ins. Co.*, 210 Ill. App. 3d 443, 449 (1st Dist. 1991) (policy must be interpreted \*16 in favor of coverage when ambiguity is created by conflicting riders regarding passenger coverage in a motorcycle insurance policy); *Brown v. Cont'l Cas. Co.*, 591 F. Supp. 3d 340, 349 (N.D. Ill. 2022) (interpretation of an ambiguous policy cannot be determined at motion to dismiss stage, because extrinsic evidence may be introduced to aid in interpretation).

The District Court's holding turns on one detail in the computer fraud: the fraudsters hacked the CFO's email account to internally direct OSD employees to send wire instructions. Indeed, even the very same fraud that occurred here would be covered under the District Court's construction if the thief had used a slightly different communication method to direct the transfer. According

to the District Court, the following modes of computer fraud, also involving fraudulent intra-OSD communications, would be covered by Rider 13, and not excluded under Rider 17 (or affected by any other Rider):

0b7 A fraudster hacks the CFO's internal accounts and uses an internal OSD instant messaging client to pretend to be the CFO and send fraudulent wire instructions.

0b7 A fraudster hacks the CFO's internal accounts and, through posts to the CFO's internal OSD social media page, instructs others to initiate the fraudulent wires.

0b7 A fraudster hacks the CFO's internal accounts and, through the word processing program on them, drafts wire instructions and prints those instructions in the office where OSD's controllers work.<sup>5</sup>

**\*17** Indeed, the Bond does not even define “Electronic Mail,” and that results in further complications. If the fraudsters hack the CFO's computer accounts and then use internal OSD email to send a *voice* message to the Controller regarding a wire transfer, which Rider applies under the District Court's reasoning? Rider 13, the computer fraud provision? Rider 17, the email fraud provision? Or Rider 12, the voice-initiated transfer provision?

The District Court's interpretation of the Bond needlessly creates these confusing questions. The turning point of coverage cannot be whether the CFO's email, instant messenger, or internal social media account was hacked. Indeed, resolving these ambiguities can be done in two easy ways. First, it is clear from reading the Bond as a whole that Rider 13, Rider 17, and the other Fraud Riders (11 and 12) are not meant to overlap. *See supra*. Second, the plain text of the supposedly applicable exclusion in Rider 17 is dispositive:

This bond does not cover:

loss resulting directly or indirectly from the Insured having, in good faith, transferred or delivered Funds, Certificated Securities or Uncertificated Securities, *in reliance upon a fraudulent instruction sent to the Insured* through electronic mail.

Compl. at PageID #:76 (emphasis added). Rejecting outright the District Court's interpretation is simple and consistent with the text “to the Insured” above; Rider 17 does not apply to emails sent within OSD.

**\*18** The District Court's interpretation, even if it were reasonable, is too ambiguous to be the basis of dismissal. According to the District Court, “to the Insured” means “to [*and within*] the Insured.” But “an ordinary person of average intelligence would not read the Hartford Bond the way that Hartford and its lawyers do.” MTD Opp. at 11; *see also Outboard Marine Corp. v. Liberty Mut. Ins. Co.*, 154 Ill. 2d 90, 108 (1992). According to the plain terms of Rider 17, “to the Insured” means “to the Insured [*from another*].” Only the latter interpretation is correct, but it certainly is reasonable. If the Bond has multiple reasonable interpretations, it is ambiguous. *See Newman v. Metro. Life Ins. Co.*, 885 F.3d 992, 999 (7th Cir. 2018) (policy ambiguous under Illinois law when it can be reasonably read in multiple ways to create conflicting coverage results); *Hobbs v. Hartford Ins. Co. of the Midwest*, 214 Ill. 2d 11, 17 (2005) (“Whether an ambiguity exists turns on whether the policy language is subject to more than one reasonable interpretation.”). An ambiguous insurance bond, under Illinois law, “will be construed liberally in favor of the insured.” *Netherlands Ins. Co. v. Phusion Projects, Inc.*, 737 F.3d 1174, 1177 (7th Cir. 2013); *see also U.S. Fid. & Guar. Co. v. Wilkin Insulation Co.*, 144 Ill. 2d 64, 74 (1991) (“All doubts and ambiguities must be resolved in favor of the insured.”).

Courts in this Circuit have held repeatedly that a motion to dismiss cannot be granted if an insurance policy is ambiguous. *See, e.g., Brown*, 591 F. Supp. 3d at 349; *Newman*, 885 F.3d at 1000; *Sieving v. Cont'l Cas. Co.*, 535 F. Supp. 3d 762, 770 (N.D. Ill.

2021) (“Ambiguous contracts are construed against the insurer, but ... the parties may introduce extrinsic evidence bearing on the ambiguous term's meaning. \*19 Accordingly, this issue cannot be resolved at the motion-to-dismiss stage.”). Therefore, because the District Court's interpretation of the Bond creates ambiguity, dismissal was improper.

In sum, applying the language of the Bond and Illinois law to OSD's complaint, Rider 13 provides coverage because OSD has alleged a “computer fraud” scheme through which fraudsters hacked and gained direct access to the OSD CFO's internal accounts. Rider 17, which compensates for losses arising from third parties impersonating external OSD customers and sending external, fraudulent emails to OSD, does not apply. It follows that the exclusion found in Rider 17 also does not apply because, like the Rider itself, the exclusion applies only to emails sent *to the Insured*. OSD did not allege that anyone sent fraudulent wire instructions via email *to OSD*; it alleged that the thief entered its computer system through the CFO's internal account and then used that account to internally direct the transfer of funds. The District Court's interpretation of the Bond creates confusing and unnecessary coverage questions by turning on the technological method a fraudster uses to convey false information after hacking into OSD's computers and altering them. Moreover, even if the District Court's interpretation of the Bond were reasonable, so is OSD's. That ambiguity cannot form the basis of dismissal in Hartford's favor.

### **\*20 CONCLUSION**

This Court should reverse the District Court's judgment granting Hartford's motion to dismiss and remand for further proceedings.

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**Appendix not available.**

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### **Footnotes**

- 1 Citations to “ECF” are to docket entries in the District Court.
- 2 OSD's full name is Office of the Special Deputy Receiver, on behalf of Ann Gillespie, Director of the Illinois Department of Insurance (“*Director*”), solely in her capacity as statutory Liquidator (“*Liquidator*”) of Affirmative and Gateway,

by and through Jacob Stuckey, as Her Special Deputy Receiver and Attorney in Fact and Chief Executive Officer. *See* Complaint, ECF 1 at ¶ 9; <https://www.osdchi.com/about.htm> (last visited Dec. 10, 2025).

- 3 The District Court granted OSD leave to replead to attempt to keep Hartford in the case, but because the issues involved were legal (and not curable by additional facts), OSD did not file an amended complaint and instead asked the District Court to convert its order into a final judgment suitable for appeal. *See* Status Report, ECF 68.
- 4 Rider 11 applies when fraudulent instructions are sent to or within OSD (from “another office”) via fax. Compl. at PageID #:63. Rider 12 applies when someone impersonates a customer's voice or an OSD employee's voice to initiate a fraudulent transfer. *Id.* at PageID #:65.
- 5 Highlighting the absurdity here, if the fraudsters printed that document via a universal serial bus connection or over OSD's intranet, Rider 13 would apply. But if the *same* document was delivered to the Controller's office via an analog “telephone line,” then under the District Court's reading of the Bond, Rider 11 may preclude Rider 13's application.

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