2026 WL 222207 (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
January 26, 2026.

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

Brief and Supplemental Appendix of Defendant-Appellee Hartford Fire Insurance Company

Edward R. Brown, Lavin Rindner Duffield LLC, 1717 K Street, NW, Washington, DC 20006, (202) 759-1140 (telephone), tbrown@lrd.law, Counsel for Defendant-Appellee Hartford Fire Insurance Company.

Lena Mirilovic, Lavin Rindner Duffield LLC, 3811 Frederica Rd, Ste 201, St Simons Island, GA 31522, (912) 266-8300, lmirilovic@lrd.law, Counsel for Defendant-Appellee Hartford Fire Insurance Company.

*i TABLE OF CONTENTS

*ii TABLE OF AUTHORITIES

Cases

*1 APPELLEE'S JURISDICTIONAL STATEMENT

The jurisdictional summary in the appellant's brief is complete and correct.

STATEMENT OF THE ISSUE

Whether the District Court correctly enforced the plain terms of the Email Fraud Exclusion set forth in the Bond issued by Appellee-Defendant Hartford Fire Insurance Company ("Hartford") to Appellant-Plaintiff Office of the Special Deputy Receiver ("OSD"), which unambiguously bars coverage for OSD's claimed loss arising from a "spear phishing" fraud scheme carried out by email.

STATEMENT OF THE CASE

I. The Email Fraud Loss

On or around June 17, 2021, a bad actor gained access to the email account of OSD's chief financial officer ("CFO") through a fraudulent "spear phishing" scheme. Complaint ("Compl.") ¶ 15, Supplemental Appendix ("Supp. App.") 5. Posing as the CFO, the bad actor contacted the CFO's subordinates by email and instructed them to make money wire transfers to "fund new investments." Compl. ¶ 16, Supp. App. 5-6; see also Compl. Ex. 5, Summary of Events, p. 4, ECF 1-1 at PageID #:174. The

bad actor also used the CFO's email account to reply to questions from OSD's staff about the wire transfer instructions. Compl. ¶ 17, Supp. App. 6. Relying on the emails, OSD's financial staff completed the transfers. Compl. ¶ 16, Supp. App. 5-6.

OSD discovered the fraud on or around July 15, 2021. Compl. ¶ 19, Supp. App. 6. In total, OSD made eight wire transfers between June 23, 2021, and July 14, 2021, totaling approximately $6.85 million. Compl. ¶ 18, Supp. App. 6. As ***2** OSD recovered nearly $3 million through banking channels, it seeks coverage for approximately $3.98 million of funds it did not recover. Compl. ¶ 19, Supp. App. 6.

II. The Bond

Hartford issued Financial Institution Bond for Insurance Companies No. 83 FI 0284891-21 to OSD for the policy period of May 27, 2021 to May 27, 2022 (the "Bond"). *See* Compl. ¶ 22, Supp. App. 7; *see also* Compl. Ex. 1, Declarations, Supp. App. 33. In general, the Bond provides specified coverage to insure against loss resulting from dishonest or fraudulent acts by employees, certain criminal acts, and other events. *See, e.g.*, Compl. Ex. 1, Insuring Agreements, Supp. App. 35-37.

The Bond contains two Riders addressing fraud. First, Rider 13 of the Bond contains a "Computer Systems Fraud Insuring Agreement." *See* Compl. ¶ 24, Supp App. 7-8; Compl. Ex. 1, Rider 13, Supp. App. 67. It provides coverage for loss "resulting directly from" a fraudulent entry or change of "Electronic Data or Computer Program" within any "Computer System" operated by the Insured, provided that the entry or change causes, among other things, "property to be transferred[.]" Compl. Ex. 1, Rider 13, Supp. App. 67.

Rider 17 of the Bond specifically addresses email fraud and contains an "Electronic Mail Initiated Transfer Fraud Insuring Agreement," which provides specified, and limited, coverage for loss resulting from email fraud. Compl. ¶ 24, Supp. App. 10; Compl. Ex. 1, Rider 17 (the "Email Fraud Insuring Agreement"), Supp. App. 75. Rider 17 provides up to $250,000 in coverage for loss resulting directly from email fraud if certain conditions are met. Compl. Ex. 1, Rider 17, Supp. App. 75-76. For example, the fraudulent instruction must "purport[] and reasonably appear[] to ***3** have originated from" or on behalf of a "Customer," as defined by the Bond, and the Insured must also have engaged in certain verification procedures for transfers over $50,000. Compl. Ex. 1, Rider 17, Supp. App. 75-76. OSD does not claim to have satisfied these conditions and does not seek coverage under Rider 17. *See* Appellant-Plaintiff OSD's Brief ("App. Br.") at 10-12.

Rider 17 also includes a broad and unambiguous exclusion for losses resulting from fraudulent instructions, which further modifies coverage available under the Bond and makes clear that the only path to coverage in such instances is through the Email Fraud Insuring Agreement:

This bond does not cover: loss resulting 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 *[email]*, except when covered under the *[Email Fraud Insuring Agreement]*.

Compl. Ex. 1, Rider 17 (*emphasis added*) (the "Email Fraud Exclusion"), Supp. App. 76.

III. Hartford's Coverage Determination

By letter dated May 6, 2022, Hartford advised OSD that the Bond did not afford coverage for OSD's loss. Compl. Ex. 7, ECF 1-1 at PageID #:232-241. Among other reasons, the letter advised that the Email Fraud Exclusion in Rider 17 of the Bond barred coverage in its entirety. Compl. Ex. 7, ECF 1-1 at PageID #:239-240.

IV. The Coverage Action and the District Court's Ruling Granting Hartford's Motion to Dismiss.

OSD subsequently filed a coverage action against Hartford and another insurer, seeking among other things a declaration that the Bond affords coverage for ***4** its losses under the Computer Systems Fraud Insuring Agreement in Rider 13. *See* Compl. ¶¶ 55, 65, Supp. App. 24, 26. Hartford moved to dismiss, arguing that the Email Fraud Exclusion bars any potential coverage for OSD's claim. *See* Motion to Dismiss, ECF 21 at PageID#:299-300; Memorandum in Support of Motion to Dismiss ("MTD Memo"), ECF 22 at PageID #:310-312. In its motion, Hartford disputed that coverage was available under the Computer Systems Fraud Insuring Agreement (*see* n.1, *infra*) but argued that the Email Fraud Exclusion bars any potential coverage in any event. *See* MTD Memo, ECF 22 at PageID#:309.

OSD did not dispute the breadth of the Email Fraud Exclusion or its application to the facts pled. *See* OSD's Response to Motion to Dismiss ("Opp."), ECF 31 at PageID#:358 (OSD "*acknowledg[es]* that emails were used . . . to induce OSD employees to make the wire transfers . . . ."); *id.*, ECF 31 at PageID#:357 (stating the bad actor used an OSD "email account so as to masquerade as the CFO and trick OSD employees into making wire transfer payments"). Nor did OSD argue that the Email Fraud Exclusion was unclear or ambiguous, as it now seeks to do on appeal. Instead, OSD made one argument for coverage: asserting that Rider 13 is "self-contained" and not subject to the Bond's other terms, such as the Email Fraud Exclusion added by Rider 17. *See* Opp., ECF 31 at PageID#:364 ("[T]his case is not about what the Electronic Mail Initiated Transfer Fraud Insuring Agreement (*i.e.*, Rider 17) says; rather, it is about what the Computer Systems Fraud Insuring Agreement (*i.e.*, Rider 13) says, or perhaps more importantly, does not say.").

***5** The District Court granted Hartford's Motion to Dismiss and subsequently entered a Final Judgment in Hartford's favor. *See* Memorandum Opinion and Order ("Order"), App. 9-12; Judgment, App. 20. In granting Hartford's motion, the District Court held that the Email Fraud Exclusion in Rider 17 was unambiguous and modified the Bond as a whole, and that OSD's claim fell squarely within the exclusion. *See* Order, App. 10-12. The District Court ruled in favor of OSD against the other insurer, allowing claims against that insurer to proceed. *See* Order, App. 10-19. Those claims have since been resolved.

SUMMARY OF ARGUMENT

The District Court correctly determined that Hartford owes no coverage because the Email Fraud Exclusion unambiguously bars any potential coverage for OSD's loss under the Bond. The Email Fraud Exclusion in Rider 17 by its plain terms bars coverage. On its face, the exclusion modifies "[t]his bond" as a whole and is not limited to the Email Fraud Insuring Agreement coverage afforded under Rider 17. Likewise, the Computer Systems Fraud Insuring Agreement coverage set forth in Rider 13, which OSD now argues on appeal is available, is also incorporated into "the bond" as a whole and is subject to all "the conditions and limitations in the bond," including the Email Fraud Exclusion. The District Court properly rejected OSD's "tortured reading" of the Bond and its contention that each rider should be read in isolation or as self-contained coverage, which is inconsistent with the terms of the Bond and Illinois law requiring that an insurance policy including attached ***6** endorsements or riders must be read together as a whole, giving effect to all provisions. There is no ambiguity that precludes entry of judgment for Hartford.

OSD raises new arguments on appeal—specifically, that the words "from another" must be read into the Email Fraud Exclusion such that it reads "sent to the Insured *from another* through electronic mail" rather than the words actually used in the exclusion. *See* App. Br. at 13-14, 18. This argument also fails. First, OSD has waived this argument by failing to raise it before the District Court and making it instead for the first time in this appeal. Setting aside waiver, the argument fails on the merits because it requires the addition of new terms that simply are not contained in the Email Fraud Exclusion, and because OSD in fact alleges that a "third-party perpetrator" outside of OSD sent the emails at issue in any event.

Finally, despite OSD's assertion to the contrary, Hartford has always disputed whether the Computer Systems Fraud Insuring Agreement in Rider 13 is implicated here. Hartford moved to dismiss before the District Court based on the narrow legal issue of whether the Email Fraud Exclusion bars coverage, even if Rider 13 otherwise was implicated. The issue of Rider 13's application was not briefed by either party or addressed by the District Court. Therefore, even if the Court were to find that

the Email Fraud Exclusion does not apply, whether Rider 13's coverage applies would be an issue for the parties to address on remand to the District Court.

*7 ARGUMENT

I. The District Court correctly ruled that the Email Fraud Exclusion in Rider 17 is a complete bar to coverage for OSD's losses due to the spear phishing scheme.

The District Court correctly determined that the Email Fraud Exclusion in Rider 17 modifies the Bond as a whole and that OSD's claim for coverage "fall[s] squarely within Rider 17's exclusion," which unambiguously bars coverage. Order, App. 10-12.

A. The Email Fraud Exclusion unambiguously bars coverage for OSD's loss.

The Email Fraud Exclusion bars coverage for "loss resulting 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 . . . ." Compl. Ex. 1, Supp. App. 76. As the District Court correctly ruled, OSD's loss clearly falls within the scope of the exclusion. OSD repeatedly alleges that its loss resulted from transfers made in reliance on fraudulent emails from a bad actor:

[C]ertain employees in OSD's finance and accounting department were deceived by e-mails from perpetrators of fraud that appeared as if they were coming from OSD's *[CFO]*, resulting in the transfer of approximately $6.8 million dollars.

. . . .

[The scheme] "proceeded when the CFO's accounting and finance subordinates . . . were contacted by e-mail by the third-party perpetrator (posing as the CFO) who requested monetary wire transfers to fund new investments. OSD financial staff completed the transfers*[.]*

Compl. ¶¶ 2, 16 (*emphasis added*), Supp. App. 2, 5-6.

***8** OSD cannot establish coverage under Rider 13. [1] But even if it could, the Email Fraud Exclusion squarely applies to bar coverage. *See, e.g.*, *Riverwalk Seafood Grill Inc. v. Travelers Cas. Ins. Co. of Am.*, No. 20 C 3768, 2021 WL 81659, at *3 (N.D. Ill. Jan. 7, 2021) (exclusion barring coverage for loss caused "directly or indirectly" by a virus is "clear, sweeping, and all-encompassing;" noting federal courts have "nearly unanimously" held that similarly worded virus exclusions bar coverage for losses where insureds argue loss results from governmental order); *ABC Diamonds Inc. v. Hartford Cas. Ins. Co.*, No. 22-1026, 2022 WL 1830692, at *2 (7th Cir. June 3, 2022) (confirming prior holding that exclusion for loss "caused directly or indirectly by" a virus "clearly and without doubt preclude[d] coverage" for business loss) (*citation omitted*).

B. The Email Fraud Exclusion amends the Bond as a whole and does not apply solely to coverage afforded under Rider 17.

In attempting to evade the plain terms of the Email Fraud Exclusion, OSD argues that Rider 17 "has no application" to its claim because Rider 17's Electronic Mail Initiated Transfer Fraud Insuring Agreement (the "Email Fraud Insuring Agreement") does not afford coverage here. App. Br. at 10-12. In other words, OSD ***9** argues that Rider 17 is "self-contained" and applies only to the coverage in Rider 17 and does not apply to the coverage afforded under Rider 13.

The plain language of the Email Fraud Exclusion flatly contradicts this reading. Indeed, such a reading would nullify the Email Fraud Exclusion altogether, which by its terms does not apply where there is coverage under Rider 17's insuring agreement.

The District Court correctly rejected OSD's strained, illogical arguments that the Email Fraud Exclusion does not apply to the Bond as a whole or to bar coverage under Rider 13. This ruling was correct for several reasons.

First, the plain language of the Email Fraud Exclusion refutes OSD's assertion that the exclusion applies only to Rider 17's coverage. Rider 17 expressly states that the "conditions and limitations of this Bond [are] amended to include" and lists the Email Fraud Exclusion and three other exclusions. For additional clarity, the lead-in language for the Email Fraud Exclusion also states, "This bond does not cover[.]" *See* Compl., Ex. 1, Rider 17, Supp. App. 75-76.

THIS RIDER CHANGES THE BOND. PLEASE READ IT CAREFULLY.

ELECTRONIC MAIL INITIATED TRANSFER FRAUD INSURING AGREEMENT

. . .

Section 2, Exclusions, of the CONDITIONS AND LIMITATIONS of this Bond is amended to include:

This bond does not cover:

***10** *See id.* As the District Court correctly found, "[t]his language is not ambiguous: if a claim meets the exclusion, coverage is provided only if the Electronic Mail Initiated Transfer Fraud insuring agreement applies."[2] Order at 10, App. 10.

Next, the Computer Fraud Insuring Agreement in Rider 13 is not siloed from the conditions and limitations that otherwise apply to "the Bond," including the Email Fraud Exclusion in Rider 17. Rather, Rider 13 amends and is expressly incorporated into the Bond:

THIS RIDER CHANGES THE BOND. PLEASE READ IT CAREFULLY.

COMPUTER SYSTEMS FRAUD INSURING AGREEMENT

. . .

1. The attached bond is amended by adding an Insuring Agreement as follows:

Compl., Ex. 1, Rider 13, Supp. App. 67. Thus, any exclusions that apply to the Bond apply to the insuring agreement. *See Alshwaiyat v. American Serv. Ins. Co.*, 986 N.E.2d 182, 191 (Ill. App. Ct. 2013) ("Illinois courts have long recognized that 'an insurance contract includes the printed form policy, declarations, and any endorsements,' . . . and that endorsements do not themselves represent a completely new policy.") (*citation omitted*); ***11** *Viking Constr., Inc. v. 777 Residential, LLC*, 210 A.3d 654, 664 (Conn. App. Ct. 2019) ("Because [the endorsement] is incorporated by reference into the main policy, all of the provisions of the main policy apply to the endorsement with equal effect").

Rider 13 also expressly states that the "Conditions and Limitations" of the Bond apply to it:

2. In addition to the Conditions and Limitations in the bond, the following, applicable to the Computer Systems Fraud Insuring Agreement, are added:

Compl., Ex. 1, Rider 13, Supp. App. 67.

Lastly, when an exclusion in the Bond does not apply to Rider 13, it expressly states so:

The exclusion below, found in Financial Institution Bond For Non-Bank Lenders and Real Estate Investment Trusts and Financial Institution Bond For Investment Firms does not apply to the Computer Systems Fraud Insuring Agreement.

Compl., Ex. 1, Rider 13, Supp. App. 69. That is, as the District Court noted, "Rider 13 **does** do what OSD urges should be done"—specifying which exclusions are not applicable to a particular insuring agreement. Order at 10-11, App. 10-11 (*emphasis in the original*).

Thus, the plain and express language of the Bond, read as a whole, establishes that Rider 13 is subject to all the exclusions contained in the Bond, including the Email Fraud Exclusion, unless otherwise specified. As the District Court explained, the riders to the Bond are not "walled-off policies that do not interact with the Bond as a whole." Order at 10, App. 10. *See also Travelers Indem. Co. of Conn. v. Richard Mckenzie & Sons, Inc.*, 10 F.4th 1255, 1264 (11th Cir. 2021) ("The most common-sense and natural reading of the endorsement is that it does not silently exempt itself ***12** from the policy's full and long list of standard exclusions, except as specified."); *see also Newman v. Metro. Life Ins. Co.*, 885 F.3d 992, 998 (7th Cir. 2018) ("Importantly, an insured cannot manufacture ambiguity by taking portions of a policy in isolation; the policy (like any contract) must be read as a whole.") (*citation omitted*).

Indeed, OSD's proposed interpretation of the Bond—that the Email Fraud Exclusion in Rider 17 applies only to the Email Fraud Insuring Agreement in that rider—would improperly render the Email Fraud Exclusion meaningless and circular. It could never apply to any loss: if loss triggered the insuring agreement, the exclusion would not apply because of the exception; if loss did not trigger the insuring agreement, there would be nothing to exclude. Such an interpretation violates Illinois contract principles, which bar the interpretation of a contract term in a way that renders it superfluous. *See Thompson v. Gordon*, 948 N.E.2d 39, 47 (Ill. 2011) ("A court will not interpret a contract in a manner that would nullify or render provisions meaningless, or in a way that is contrary to the plain and obvious meaning of the language used."); *Czapski v. Maher*, 954 N.E.2d 237, 244 (Ill. App. Ct. 2011) ("An interpretation that renders a provision meaningless is not reasonable.") (*citations omitted*).

On the other hand, applying the Email Fraud Exclusion to the Computer Systems Fraud Insuring Agreement does not "negate" the coverage under Rider 13. *See* App. Br. at 13. OSD does not claim that applying the Email Fraud Exclusion would render coverage under Rider 13 illusory, nor would there be any basis for such ***13** an argument.[3] "An insurance company has the right to limit coverage on a policy it issues and when it has done so, the plain language of the limitation must be effectuated." *First Nat. Bank of Chicago v. Fid. & Cas. Co. of New York*, 428 F.2d 499, 501 (7th Cir. 1970) (*Illinois law; citations omitted*); *see also Rich v. Principal Life Ins. Co.*, 875 N.E.2d 1082, 1094 (Ill. 2007) ("An exclusion in an insurance policy serves the purpose of taking out persons or events otherwise included within the defined scope of coverage.") (*citation omitted*). The type of loss excluded by the Email Fraud Exclusion is certain and specified. The exclusion would not apply to a computer fraud scheme that does not use email, such as a bad actor's use of an employee's login credentials to initiate a bank wire without using email, or a bad actor uploading malicious code that has the effect of diverting funds. Thus, the Email Fraud Exclusion in Rider 17 does not improperly nullify coverage under Rider 13, even though it clearly defeats coverage in this case.

II. OSD's purported confusion about the proper interpretation of the Bond does not create any ambiguity.

Proceeding from the faulty premise that Rider 13 and Rider 17 of the Bond should each be read in isolation as "self-contained" contracts, OSD contends that the ***14** District Court's interpretation of the Bond "creates ambiguity and confusion." App. Br. at 15. But OSD's claimed confusion about how the Bond riders interact with each other and the other Bond terms does not create ambiguity.

Unable to find actual language in the Bond to point to as ambiguous, OSD asserts as supposed evidence of ambiguity that it is "strange" that the scope of coverage under Rider 13's Computer Systems Fraud Insuring Agreement would "depend[] on the method of computer fraud" based on an exclusion found in Rider 17 and that this involves purportedly "unnecessary cross-referencing." App. Br. at 15.

But there is nothing strange or improper about an insurance bond or policy containing multiple riders or endorsements that modify the base coverage form as well as the other riders or endorsements. Illinois law is clear that riders are part of the bond, and all parts of the bond are read together as part of the same contract. *See, e.g.*, *Alshwaiyat*, 986 N.E.2d at 191 (citing *Makela v. State Farm Mut. Auto. Ins. Co.*, 497 N.E.2d 483, 488 (Ill. App. Ct. 1986) ("[A]n insurance contract includes the printed form policy, declarations, and any endorsements, and all parts are to be considered together to ascertain the meaning, purpose, and intent of the parties.") (*citation omitted*); *see also Viking Constr., Inc.*, 210 A.3d at 664 (ruling that endorsement was incorporated into and amended the main policy, and that exclusion within the endorsement unambiguously barred coverage).

That the Bond could have been written differently also does not render it ambiguous. *See, e.g.*, *Richard Mckenzie & Sons, Inc.*, 10 F.4th at 1264 ("A provision is not ambiguous simply because it is complex or requires analysis . . . . While ***15** insurance policies may be confusing to persons not trained or experienced in the form and language of insurance policies . . . that fact does not make such policies or language legally ambiguous.") (*internal citations omitted*); *Nautilus Ins. Co. v. RMB Enterprises, Inc.*, 497 F. Supp. 3d 936, 953 (D. Haw. 2020) ("[C]omplexity alone [does not] create an ambiguity . . . ."); *Pennbarr Corp. v. Ins. Co. of N. Am.*, 976 F.2d 145, 151 (3d Cir. 1992) ("An insurance policy cannot be rewritten by the court and is not ambiguous merely because it is complex").

There also is nothing improper or ambiguous about the Bond treating email fraud differently from other types of computer fraud. *See* App. Br. at 16-17. The Bond affords limited, carefully specified coverage for email fraud under Rider 17, subject to several conditions aimed at limiting the frequency or severity of losses. *See* Compl. Ex. 1, Rider 17, Supp. App. 75. And the Email Fraud Exclusion makes clear that the Bond affords no coverage for email fraud except for claims that satisfy the conditions of Rider 17's insuring agreement. *Id.*, Rider 17, Supp. App. 76. While OSD may wish it had purchased broader coverage for email fraud, such as with higher limits and without the conditions OSD could not meet in this case to access the coverage (the existence of which would lead many insureds to establish protocols to prevent the very type of fraud that OSD fell victim to here), it cannot now seek to rewrite the plain terms of the Bond. *See, e.g.*, *Barth v. State Farm Fire & Cas. Co.*, 886 N.E.2d 976, 982-83 (Ill. 2008) (enforcing unambiguous policy terms and rejecting argument to "read into [the] language any additional terms"); *Mid-Century Ins. Co. v. Safeco Ins. Co. of Am.*, 287 N.E.2d 529, 531 (Ill. App. Ct. 1972) ("[I]t is the duty of this court ***16** to construe the contract as written and not to rewrite it. . . ."); *Oak Park Tr. & Sav. Bank v. Intercounty Title Co. of Illinois*, 678 N.E.2d 723, 725 (Ill. App. Ct. 1997) ("As with any insurance policy, courts are not to distort the language of the title policy to create ambiguities in order to rewrite the policy.") (*citation omitted*).

There is no dispute here that the fraudulent instructions at issue causing OSD's loss were sent by email. *See, e.g.*, Compl. ¶¶ 2, 16, Supp. App. 2, 5-6. Hypothetical scenarios of "confusing questions" purportedly created by the District Court's ruling, such as whether a voice message sent via email might constitute "Electronic Mail" and implicate the Email Fraud Exclusion (App. Br. at 17), are simply beside the point. *See, e.g.*, *Hammond Power Sols., Inc. v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA*, 142 F.4th 945, 953 (7th Cir. 2025) (Wisconsin law; "whether future results might be absurd can be resolved in future cases: 'these hypothetical facts are not before the court. We do not reach decisions based on hypothetical facts"') (*citation omitted*); *Ornoff v. Westfield Nat. Ins. Co.*, 2013 IL App (1st) 122728-U, ¶ 32 (*unpublished*) ("[T]he concerns raised . . . not only fail to create ambiguity in this policy but also are merely hypothetical in this case").

In sum, the Bond and Email Fraud Exclusion are unambiguous and by their plain terms afford no coverage for OSD's loss. The District Court therefore properly granted Hartford's Motion to Dismiss and entered judgment in its favor. *See, e.g.*, *ABC Diamonds Inc*, 2022 WL 1830692, at *2 (affirming dismissal of coverage action where policy exclusion unambiguously barred coverage); *Czapski*, 954 N.E.2d at 240 (interpretation of insurance policy terms is a legal issue for the court).

***17 III. OSD's argument that the Email Fraud Exclusion is ambiguous, even if it otherwise applies to Rider 13's coverage, should be rejected.**

OSD now argues that, even if the Email Fraud Exclusion in Rider 17 could apply to the coverage granted under Rider 13, the exclusion is ambiguous and therefore should be construed in favor of coverage. Specifically, OSD argues that the exclusion

does not bar coverage because there purportedly was no email sent "to the insured"—which OSD contends requires the court to read in "from another" and require that an outside, third party sent the email. App. Br. at 13-14. OSD failed to raise any such argument in the District Court and therefore has waived it. *Moreover*, the argument is contrary to both the plain terms of the Email Fraud Exclusion and the facts of the claim as alleged by OSD, and it also fails on the merits.

A. OSD waived the argument it now seeks to make for the first time on appeal.

OSD waived the argument that the Email Fraud Exclusion, by its terms, *does* not apply to OSD's claim by failing to raise it before the District Court and instead making the argument for the first time in this appeal. OSD argued below that the Email Fraud Exclusion in Rider 17 applied only to Rider 17's coverage, and thus it did not apply to the coverage in Rider 13, or that the exclusion was somehow "hidden" such that it should not be enforced. *See* OSD's Response to Motion to Dismiss, ECF 31 at PageID#:364-370. OSD chose not to make any argument that the exclusion, based on its own terms, does not apply to the claim, and did not argue that the phrase "to the Insured" in the exclusion imposes the conditions OSD now claims are not satisfied. OSD also did not seek to amend its complaint after the District Court's ruling, which would have been necessary to support its new claims of ambiguity.

***18** The Seventh Circuit has made clear: "[A]n appellant cannot conjure up brand new legal arguments on appeal. Failure to raise an argument with the district court generally means that you cannot make that argument on appeal." Practitioner's Handbook for Appeals to the United States Court of Appeal for the Seventh Circuit at 161, Section XXII.A.9 (*citing Wheeler v. Hronopoulos, 891 F.3d 1072, 1073 (7th Cir. 2018); Builders NAB LLC v. Federal Deposit Ins. Corp., 922 F.3d 775, 778 (7th Cir. 2019) (legal contentions must be presented in the district court before it acts rather than in a motion filed after judgment)*). Thus "a party has waived the ability to make a specific argument for the first time on appeal when the party failed to present that specific argument to the district court, even though the issue may have been before the district court in more general terms." *Fednav Int'l Ltd. v. Cont'l Ins. Co.*, 624 F.3d 834, 841 (7th Cir. 2010) ("It is well-settled that a party may not raise an issue for the first time on appeal."). Having opted not to present the argument it now makes to the District Court before judgment was entered, OSD should not be permitted to now make this new argument on appeal.

B. OSD's strained reading of the Email Fraud Exclusion fails on the merits.

Even if it were not waived, OSD's novel argument fails on the merits. The exclusion provides that the 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. Ex. 1, Supp. App. 76 (*emphasis added*). According to OSD, "to the Insured" as used in the exclusion really means "to the Insured *from another*" (rather than just "to ***19** the Insured" as the District Court found based on the exact language of the Bond). According to OSD, this requires that the email containing the fraudulent instruction be sent by an outside or third party, not from someone operating within OSD's environment. App. Br. at 18.

This reading of the Email Fraud Exclusion is not reasonable and improperly attempts to rewrite the terms of the exclusion. Given its ordinary and usual meaning, an email "sent to the Insured" is naturally read to include emails "sent to the Insured" and has no language to limit the exclusion based on the identity of the purported sender. An "average, ordinary, normal, and reasonable person" would understand an email "sent to [OSD]" to include an email sent from one OSD employee to another OSD employee. *Newman*, 885 F.3d at 998 (*citation omitted*). There is no ambiguity that would warrant construing the exclusion in favor of coverage. *See, e.g.*, *Hobbs v. Hartford Ins. Co. of the Midwest*, 823 N.E.2d 561, 564 (Ill. 2005) ("Although 'creative possibilities' may be suggested, only reasonable interpretations will be considered. [] Thus, we will not strain to find an ambiguity where none exists.") (*citation omitted*); *Crescent Plaza Hotel Owner, L.P. v. Zurich Am. Ins. Co.*, 20 F.4th 303, 308 (7th Cir. 2021) ("[D]isagreement between the parties as to meaning does not itself make the policy ambiguous" and courts must not "strain

to find an ambiguity where none exists.") (*citation omitted*). Indeed, the fact that OSD never made this argument before this appeal underscores that its newfound interpretation is not reasonable.

There is no requirement in the text of the Email Fraud Exclusion that the email be sent to the insured *from an outside party*. Under Illinois law, courts "will ***20** not read into the policy language any additional terms." *Margulis v. BCS Ins. Co.*, 23 N.E.3d 472, 480 (Ill. App. Ct. 2014) (rejecting the claimant's argument that the policy terms required a "substantial nexus" between the insured's "telemarketing activity and its business as an insurance agent" because the "policy does not mention or require any 'nexus'") (*citing Barth, 886 N.E.2d at 982-83 ("The language used unambiguously conveys the contours of the exclusion, and this court may not properly read into that language any additional terms;" rejecting insured's argument that "concealment or fraud" exclusion should be read to require insurer to "add common law fraud elements into the policy when they are not specifically excluded")*).

The fact that communications within OSD are specified elsewhere in the Bond in the insuring agreements of Riders 11 and 12 does not undermine the plain reading of the Email Fraud Exclusion, as OSD claims. *See* App. Br. at 14. Rider 11 affords specified coverage for loss due to fraudulent instructions received by facsimile that appear to have originated from "another office of the Insured," and Rider 12 affords certain coverage for fraudulent voice instructions transmitted by telephone purporting to be from "an Employee of the Insured in another office of the Insured. . . ." Compl. Ex. 1, Riders 11 and 12, Supp. App. 63, 65. The insuring agreements of Riders 11 and 12 specify in detail where the fax or voice communication must appear or purport to have originated for coverage to be triggered, and list communications within OSD among other sources such as Customers of the Insured. *See id.* The Email Fraud Exclusion, by contrast, broadly applies to fraudulent email instructions sent "to the Insured" regardless of origin—*there is no restriction or limitation on the origin* ***21** of the email communication in the exclusion. *See* Compl. Ex. 1, Rider 17, Supp. App. 76.

Moreover, what OSD claims the Email Fraud Exclusion requires—*that the email providing the fraudulent instruction be sent by a party outside OSD*—is in fact what it alleges occurred here that caused its loss. As alleged in OSD's Complaint, a malicious third party sent the emails containing the fraudulent wire instructions to OSD employees. OSD alleges that *"certain employees in OSD's finance and accounting department were deceived by e-mails from perpetrators of fraud that appeared as if they were coming from OSD's Chief Financial Officer,"* but in fact were sent by a "third-party perpetrator" posing as the CFO who had fraudulently obtained access to the CFO's OSD Outlook e-mail account. *See* Compl., ¶¶ 2, 15-16, Supp. App. 2, 5. OSD further alleges that *"the third-party perpetrator . . . was able to circumvent the CFO and his email inbox and reply to any questions OSD accounting and finance staff had regarding the subject monetary wire transfer transactions."* Compl., ¶ 17, Supp. App. 6 (*emphasis added*). There would have been no fraud, and no loss here, had a "third-party perpetrator" not sent the fraudulent wire transfer instructions at issue. Thus, even if OSD's argument based on the text of the Email Fraud Exclusion had any merit, it fails in any case given OSD's own allegations that form the basis of its claim.

IV. The District Court did not address whether Rider 13's insuring agreement is implicated, which is a disputed issue.

OSD contends that the Computer Systems Fraud Insuring Agreement in Rider 13 of the Bond applies and affords coverage for OSD's claim due to the spear phishing ***22** fraud—and flatly asserts that "[n]o one below, neither Hartford nor the District Court, disputed [this]." App. Br. at 7. OSD misconstrues the record in the case.

Hartford plainly stated in the District Court that it disputes whether the Computer Systems Fraud Insuring Agreement is implicated by OSD's claim. *See* MTD Memo, ECF 22 at PageID#:309. As set out in Hartford's coverage position letter, OSD's "claimed loss did not result directly from a fraudulent entry of Electronic Data or Computer Program into OSD's Computer System or change of Electronic Data or Computer Program within OSD's Computer System," as required for coverage under the Computer Systems Fraud Insuring Agreement to apply. Compl. Ex. 7, ECF 1-1 at PageID#:236.

Rather than asking the District Court to consider whether the Computer Systems Fraud Insuring Agreement was implicated, Hartford's Motion to Dismiss "focuse[d] solely on the narrow, purely legal issue of whether the Email Fraud Exclusion bars

coverage under the Computer Systems Fraud Insuring Agreement, assuming it is triggered." *See* MTD Memo, ECF 22 at PageID#:309. Because it was unnecessary for the District Court to reach this issue, it did not address or rule on whether the Computer Systems Fraud Insuring Agreement was implicated in the first instance in granting Hartford's Motion to Dismiss. *See* Order, App. 9-12. Likewise, the Court need not make any determination regarding this issue in order to rule in this appeal. As in the District Court, the narrow legal issue before the Court is whether the Email Fraud Exclusion bars coverage for OSD's claim, assuming that coverage otherwise is implicated.

***23** Even if the Court were to conclude that the Email Fraud Exclusion does not apply, the Computer Systems Fraud Insuring Agreement would not apply (*see* n.1, *supra*) and would at the very least remain a disputed issue for consideration on remand to the District Court. *See, e.g.*, *Walker v. Wallace Auto Sales, Inc.*, 155 F.3d 927, 936 (7th Cir. 1998) ("Because the district court did not reach the issue of whether the plaintiffs' remaining claims are viable and the parties have not briefed that issue on appeal, we remand that issue to the district court for its consideration in the first instance."); *see also* App. Br. at 7 (seeking reversal and remand to the District Court for further proceedings).

CONCLUSION

For all these reasons, Hartford respectfully requests that the Court affirm the District Court's final judgment and enter any additional relief to which it may be entitled.

January 26, 2026

Respectfully submitted,

/s/Edward R. Brown

Edward R. Brown

Lena Mirilovic

LAVIN RINDNER DUFFIELD LLC

1717 K Street NW

Washington, DC 20006

(202) 759-1140 (telephone)

tbrown@lrd.law

lmirilovic@lrd.law

Counsel for Defendant-Appellee

Hartford Fire Insurance

Company

Appendix not available.

Footnotes

1 For example, in addition to the Email Fraud Exclusion in Rider 17, Hartford noted that coverage would be unavailable under Rider 13 in any event because: (1) the loss did not fall within the scope of coverage; (2) loss would be barred by an exclusion for "loss resulting directly or indirectly from . . . documents or other written instruments which bear a forged signature, or are counterfeit, altered or otherwise fraudulent and which are used as source documentation in the preparation of Electronic Data or manually keyed into a data terminal"; and (3) loss would be barred by an exclusion for "loss resulting directly or indirectly from the theft of confidential information." Compl. Ex. 7, ECF 1-1 at PageID #:236-237. These provisions were not addressed by the District Court and, instead, the District Court ruled on the narrow question of whether the Email Fraud Exclusion barred coverage in its entirety.

2 By contrast, certain other coverages added to the Bond by rider do *not* amend "the Bond." For example, the Computer Systems Fraud Insuring Agreement in Rider 13 is subject to the conditions and limitations of the Bond *in addition to* certain exclusions *only* applicable to the Computer Systems Fraud Insuring Agreement. *See* Compl. Ex. 1, Rider 13, Supp. App. 67-69. Likewise, the "Telefacsimile Transfer Fraud" and the "Voice Initiated Transfer Fraud" insuring agreements, both added to the Bond by rider, contain exclusions applicable *only* to those riders. *See* Compl., Ex. 1, Riders 11, and 12, Supp. App. 63-66. The contrast highlights the intentional application of the exclusions contained in Rider 17 *to the Bond* and not only "applicable to the Email Fraud Insuring Agreement." *Compare* Compl., Ex. 1, Rider 17, Supp. App. 76, *with* Compl., Ex. 1, Rider 11, Supp. App. 64.

3 An insurance policy is illusory under Illinois law only if "there is no possibility under any set of facts for coverage." *U.S. Specialty Ins. Co. v. Vill. of Melrose Park*, 455 F. Supp. 3d 681, 689 (N.D. Ill. 2020) (*emphasis added*); *see also Thermoflex Waukegan, LLC v. Mitsui Sumitomo Ins. USA, Inc.*, 595 F. Supp. 3d 677, 685 (N.D. Ill. 2022) aff'd, 102 F.4th 438 (7th Cir. 2024) ("A 'policy need not provide coverage against all possible liabilities; if it provides coverage against some, the policy is not illusory.'") (*citation omitted*); *CFIT Holding Corp. v. Twin City Fire Ins. Co.*, 548 F. Supp. 3d 701, 710 (N.D. Ill. 2021) (collecting cases) ("The fact that a policy provision covers an uncommon set of occurrences does not render coverage under the provision illusory, as one important purpose of an insurance policy is to protect against harms that may be out of the ordinary").

End of Document