SUPREME COURT OF OHIO

EMOI Services, L.L.C. v. Owners Insurance Company

EMOI Servs., L.L.C. v. Owners Ins. Co., 2022-Ohio-4649 (Ohio 2022) · No. 2021-1529 · Decided December 27, 2022

SUMMARY

The Supreme Court of Ohio held that a businessowners insurance policy requiring direct physical loss of or damage to covered media did not cover losses from a ransomware attack. Because computer software is intangible and the attack caused no physical damage to the hardware or media containing the software, the electronic-equipment endorsement did not apply. The court reversed the Second District Court of Appeals and reinstated summary judgment for Owners Insurance Company.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Stewart, J.; O'Connor, C.J.; Kennedy, J.; Fischer, J.; DeWine, J.; Donnelly, J.; Brunner, J.
JURISDICTION	Ohio
DECIDED	December 27, 2022
DOCKET	2021-1529
DISPOSITION	reversed
PROCEDURAL POSTURE	Owners appealed the Second District Court of Appeals' reversal of summary judgment entered in Owners' favor on EMOI's breach-of-contract and bad-faith claims.
STANDARD OF REVIEW	The court reviewed the interpretation of the insurance policy as a question of law and reviewed the summary-judgment disposition under the applicable de novo standard.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Owners Insurance Company v. EMOI Services, L.L.C.

TOPICS

insurance coverage · insurance bad faith · contract interpretation · breach of contract · appellate procedure

PRACTICE AREAS

insurance law · contract law · commercial litigation · appellate practice

QUESTIONS PRESENTED

1. Whether the businessowners policy's electronic-equipment endorsement covers losses from a ransomware attack when the attack caused no direct physical loss of or physical damage to covered media or hardware.
2. Whether Owners breached the insurance contract by denying EMOI's claim.
3. Whether EMOI's bad-faith claim could proceed despite the absence of coverage.

HOLDINGS

1. The endorsement requires direct physical loss of or direct physical damage to covered media caused by a covered cause of loss. Computer software, as an intangible item, cannot itself experience direct physical loss or physical damage, and the policy does not provide coverage absent physical damage to the media containing the software.
2. Owners did not breach its insurance contract with EMOI because the policy did not cover the type of loss caused by the ransomware attack.
3. The court reinstated summary judgment for Owners on EMOI's claim for bad-faith denial of insurance coverage because the policy did not provide coverage for EMOI's loss.

KEY QUOTATIONS

> *"Since software is an intangible item that cannot experience direct physical loss or direct physical damage, the endorsement does not apply in this case."* (¶ 13)

> *"We hold that "covered media" means media that has a physical existence."* (¶ 15)

> *"Computer software cannot experience "direct physical loss or physical damage" because it does not have a physical existence."* (¶ 16)

FACTUAL BACKGROUND

A hacker encrypted files needed to operate EMOI's software and database systems and demanded approximately $35,000 in bitcoin for a decryption key. EMOI paid the ransom and recovered most of the files, although an automated phone system remained encrypted; no hardware or equipment was physically damaged. Owners denied coverage for the ransom, investigation and remediation costs, and security upgrades under the data-compromise and electronic-equipment endorsements.

PROCEDURAL HISTORY

After a ransomware attack encrypted files used in EMOI's software and database systems, Owners denied EMOI's claim under its businessowners policy. The trial court granted summary judgment to Owners, concluding that the policy did not cover the loss. The Second District reversed, holding that factual issues existed regarding physical damage to the software and Owners' alleged bad faith. The Supreme Court of Ohio accepted Owners' appeal, found merit in its first proposition of law, reversed the appellate judgment, and reinstated the trial court's summary judgment.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The Supreme Court reinstated the trial court's grant of summary judgment in favor of Owners; no further remand instructions were stated.

CASES CITED

- Westfield Ins. Co. v. Galatis, 100 Ohio St. 3d 216, 2003-Ohio-5849, 797 N.E.2d 1256
- Kelly v. Med. Life Ins. Co., 31 Ohio St. 3d 130, 509 N.E.2d 411 (1987)
- Alexander v. Buckeye Pipe Line Co., 53 Ohio St. 2d 241, 246, 374 N.E.2d 146 (1978)
- Ward Gen. Ins. Servs., Inc. v. Emps. Fire Ins. Co., 114 Cal. App. 4th 548, 554, 7 Cal. Rptr. 3d 844 (2003)
- Santo's Italian Café, L.L.C. v. Acuity Ins. Co., 15 F.4th 398, 402 (6th Cir. 2021)
- Kingray, Inc. v. Farmers Group, Inc., 523 F. Supp. 3d 1163, 1173 (C.D. Cal. 2021)
- Fantasy Sports Properties, Inc. v. Sportsline.com, Inc., 287 F.3d 1108, 1118 (Fed. Cir. 2002)

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