

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

AMERIFORGE GROUP, INC., a Texas	§	
corporation d/b/a AFGLOBAL	§	
CORPORATION	§	
	§	
<i>Plaintiff</i>	§	
	§	
<i>versus</i>	§	CIVIL ACTION 4:16-CV-00377
	§	
FEDERAL INSURANCE COMPANY, an	§	
Indiana corporation admitted to conduct	§	
insurance business in Texas, including	§	
CHUBB & SON, A DIVISION OF FEDERAL	§	
INSURANCE COMPANY	§	
	§	
<i>Defendant</i>	§	

PLAINTIFF’S FIRST AMENDED COMPLAINT

TO THE HONORABLE ALFRED H. BENNETT:

COMES NOW, Ameriforge Group Inc., a Texas corporation, d/b/a AFGlobal Corporation (“AFGlobal”), Plaintiff in the above-styled cause, hereby complaining of Federal Insurance Company, an Indiana corporation admitted to conduct insurance business in Texas, including Chubb & Son, a division of Federal Insurance Company (“Federal” “Defendant” or if specifically concerning its Division Chubb & Son, hereafter referred to as “Defendant Federal including its Division Chubb & Son”), Defendant, and for this cause of action would show the Court as follows:

I. PARTIES

1. Plaintiff, Ameriforge Group Inc., a Texas for profit corporation, d/b/a AFGlobal Corporation is a Texas corporation with its principal place of business in Houston, Harris County, Texas.

2. Defendant Federal Insurance Company, including Chubb & Son, a Division of Federal Insurance Company, is an Indiana for profit corporation admitted to conduct insurance business in Texas, and doing business in the State of Texas, with its principal place of business at 251 North Illinois, Suite 1100, Indianapolis, Indiana 46204. Said Defendant has been served and has answered herein.

II. JURISDICTION AND VENUE

3. This Court has personal jurisdiction over Defendant because Defendant has continuous and systematic business contacts within the State of Texas. Defendant removed the case to this Court from the 190th Judicial District Court of Harris County, Texas on February 12, 2016.

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a)(1) because the Plaintiff and the Defendant are citizens of different states and the amount in controversy exceeds \$75,000, excluding interest and costs.

5. Venue is proper in this district under 28 U.S.C. § 1391(a)(2) because a substantial part of the events or omissions giving rise to this claim occurred in this district.

III. FACTS APPLICABLE TO ALL CAUSES OF ACTION

6. On or about November 13, 2013, AFGlobal purchased from Defendant a certain insurance policy. A true and correct copy of this Policy is attached as Exhibit A to this First Amended Complaint (“Complaint”). The policy period in question provided coverage for losses by AFGlobal from October 31, 2013 to October 31, 2014.

7. The policy limit is \$3,000,000.00, subject to a \$100,000.00 deductible. AFGlobal suffered a loss of \$480,000.00 as a result of a fraudulent transfer of funds as described below.

8. The fraudulent emails made on Wednesday, May 21, 2014, and continuing to Tuesday May 27, 2014, included instructions received from a person believed to be Mr. Gean Stalcup, the CEO of AFGlobal Corporation, requesting AFGlobal to initiate a wire transfer to Agriculture Bank of China. The person sending the instructions was not Mr. Gean Stalcup and is referred to hereafter as the "Imposter." The employee was Glen Wurm, Director of Accounting of AFGlobal Corporation. The Imposter's email read:

"Glen,

I have assigned you to manage file T521.

This is a strictly confidential financial operation, to which takes priority over other tasks.

Have you already been contacted by Steven Shapiro (attorney KPMG)?

This is very sensitive, so communicate with me through this email, in order for us not to infringe SEC regulations.

Please do not speak with anyone by email or phone regarding this.

Regards,
Gean Stalcup."

9. Approximately 30 minutes later, Mr. Wurm was contacted via phone and via email by a Mr. Shapiro stating that due diligence fees associated with the China acquisition in the amount of USD 480,000.00 were needed. Mr. Shapiro followed up via email with wiring instructions.

10. Mr. Wurm engaged AFGlobal's Cash Manager and AFGlobal's Treasurer with transferring the funds under the full belief he was being instructed to do so by the CEO of the company and that confidentiality was very important. After the funds transfer was made, Mr. Wurm did not receive any further correspondence from the Imposter until Tuesday May 27, 2014, when the Imposter acknowledged receipt of the funds and asked Mr. Wurm to send an additional

USD 18 million. It was at this time Mr. Wurm told the Imposter that he could not wire the funds without at a minimum informing his immediate supervisor and the company Treasurer. Mr. Wurm then immediately alerted his immediate supervisor and the officers of the company of his suspicion: Chief Accounting Officer (Tom Edgeller), Treasurer (Perry Ewing), General Counsel (Tom Giles), and Chief Financial Officer (Brian Fontana).

11. The Imposter seemed to know the normal procedures of the company and also that Gean Stalcup had a long-standing, very personal and familiar relationship with Mr. Wurm -- sufficient enough that Mr. Wurm would not question a request from the CEO. Once Mr. Edgeller and the other officers of the company realized that they had been a victim of fraud, they reacted quickly to try and retrieve the funds. The Treasurer and the Cash Manager reacted rapidly and attempted to recall the wire from Bank of America. Moreover, they instructed Bank of America to alert all the banks involved (i.e. beneficiary banks) and their security departments of the fraud. Finally, they filed a police report with the Houston Police Department.

12. The funds were transferred on Wednesday May 21, 2014. As regards discovery of the fraud, Mr. Gean Stalcup was informed of the fraud on Tuesday May 27, 2014. The Treasurer, Mr. Perry Ewing received an email from Bank of America which confirmed that the funds were transferred on Wednesday May 21, 2014. Moreover, they were informed that the beneficiary account had been zeroed out and closed.

13. Defendant was first made aware of the situation on Tuesday May 27, 2014 via the brokerage firm Aon Risk Services.

14. On or about June 2, 2014, AFGlobal filed a formal proof of loss with the insurance carrier. A copy of the proof of loss signed under oath by Perry Ewing, Corporate Treasurer, is attached hereto as Exhibit B.

15. On July 7, 2014, comprising 35 days after the proof of loss was filed, Defendant denied AFGlobal's claim in writing. A copy of this denial is attached hereto as Exhibit C; and, on October 9, 2014, Defendant further communicated to AFGlobal that the claim was being denied. A copy of the October 9, 2014 denial is attached hereto as Exhibit D. Finally, on October 30, 2015, a demand letter was sent by the undersigned law firm to Defendant, enclosing in the letter a report by an insurance underwriting expert to give Defendant notice that the failure to pay the claim and deny coverage under the particular facts and reasoning indicated in the letter amounted to bad faith. The letter also gave notice that if payment was not made as set out in the letter, suit would be filed under such claim. No response was received within 60 days, and the lawsuit was filed on January 4, 2016. Thereafter, on January 15, 2016, Defendant, through counsel, and following service of the suit on Defendant, responded to AFGlobal's October 30, 2015 letter.

IV. CONDITIONS PRECEDENT

16. All conditions precedent to maintaining this cause of action have been performed or have otherwise occurred.

V. VICARIOUS LIABILITY

17. Wherever in this Complaint it is alleged that Defendant did any act or thing, it is meant that the Defendant's officers, agents, servants, employees or representatives did such act or thing that at the time such act or thing was done, it was done with the full authorization or ratification of the Defendant or was done in the normal and routine course and scope of employment of the Defendant's officers, agents, servants, employees, or representatives. Accordingly, Defendant is liable to Plaintiff under the doctrines of respondeat superior, vicarious liability, and principal-agent, and including, all as described above, the actions of Defendant's division, Chubb & Son.

VI. CAUSES OF ACTION

A. BAD FAITH GENERALLY

18. Having determined that the aforementioned insurance was, at the time of the occurrence described above, in force and effect, Plaintiff timely and properly noticed Defendant of the occurrence and/or loss. Plaintiff fully complied with all the conditions of the insurance policy prior to bringing this suit. Nevertheless, Defendant has failed and refused, and still fails and refuses to Plaintiff, the benefits due under the policy, as Defendant is contractually required to do. Said acts or practices are in violation of Chapter 541 of the Texas Insurance Code, including Tex. Ins. Code §541, Subchapter B.

1. COMMON LAW BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING

23. The allegations of paragraphs 6 through 15 are incorporated herein, as if set out verbatim.

24. Plaintiff would show that there was an insurance contract between the Plaintiff-(Insured) and Defendant-(Insurer), which created a duty on the part of the insurer to deal fairly and in good faith with an insured in the processing of claims.

25. Defendant breached its duty when Defendant knew, or should have known, that coverage of the claim, and thus, liability for payment of the claim, was reasonably clear. No reasonable basis exists for denying payment of the claim because the claim was in fact covered by the policy. It is clear from a review of the policy that coverage arises under Subparts (E) – “Computer Fraud Coverage” and/or (F) – “Funds Transfer Fraud Coverage.”

26. Furthermore, Defendant’s breach proximately caused the Plaintiff’s damages.

2. UNFAIR SETTLEMENT PRACTICES UNDER TEXAS INSURANCE CODE CHAPTER 541

27. The allegations of paragraphs 6 through 15 are incorporated herein, as if set out verbatim.

28. Defendant's refusal to pay or deny coverage on Plaintiff's claim is in bad faith, both under the Texas common law and under the Texas Insurance Code. Defendant is liable to Plaintiff for unfair settlement practices because Defendant:

- a. failed to attempt in good faith to effectuate a prompt, fair and equitable settlement of a claim with respect to which Defendant's liability has become reasonably clear; and
- b. refused to pay a claim without conducting a reasonable investigation with respect to the claim to settle the claim when coverage is reasonably clear.

29. In a lawsuit filed under the aforementioned subchapters of the Texas Insurance Code, in particular §541 et seq., Plaintiff may obtain:

- i. Actual damages, plus court costs and reasonable and necessary attorney's fees;
- ii. On a finding by the trier of fact that Defendant knowingly committed the act(s) complained of, an amount not to exceed three (3) times the actual damages; and
- iii. Any other relief which the Court deems proper.

30. Defendant's conduct was a producing cause of Plaintiff's damages.

B. BREACH OF CONTRACT

31. The allegations of paragraphs 6 through 15 are incorporated herein, as if set out verbatim. Plaintiff would show that it entered into a binding agreement with Defendant for insurance, and that there existed a meeting of the minds as to the premiums to be paid by Plaintiff, and all actions to be taken by Plaintiff upon suffering a covered loss, and the duties and obligations

of Defendant toward AF Global. Defendant breached the contract by failing to pay on a covered claim.

32. Defendant's breach has proximately caused Plaintiff's damages, to include the policy amount, interest on the policy amount as allowed under the terms of the contract, reasonable and necessary attorneys' fees in prosecuting this claim to seek the policy amount, and court costs.

C. FAILURE TO TIMELY NOTIFY CLAIMANT OF REJECTION UNDER TEXAS INSURANCE CODE CHAPTER 542

33. The allegations of paragraphs 6 through 15 are incorporated herein, as if set out verbatim.

34. Defendant's failure to timely notify Plaintiff of the rejection of its claim was in violation of Texas Insurance Code § 542.056, requiring notice not later than 15 business days after receipt of the forms required by the insurer to secure final proof of loss.

35. In a lawsuit filed under the aforementioned subchapters of the Texas Insurance Code, in particular §542 et seq., Plaintiff may obtain:

- iv. Actual damages, plus reasonable attorney's fees to be taxed as part of the costs in the case;
- v. Interest on the amount of the claim at the rate of 18 percent a year as damages; and
- vi. Any other relief which the Court deems proper.

36. Defendant's conduct was a producing cause of Plaintiff's damages.

VII. ATTORNEYS FEES

37. Plaintiff has been required to engage the services of the undersigned attorney to represent it in this case. Accordingly, this suit is maintained against the Defendant for reasonable attorneys' fees for the services expended and to be expended in the presentation of Plaintiff's

claims though the trial court and at all levels in the appellate process. All conditions precedent necessary for the recovery of attorneys' fees by Plaintiff have been fulfilled.

VIII. PUNITIVE DAMAGES

38. The actions of the Defendant were undertaken willfully and maliciously. Defendant intentionally committed these wrongful acts and its actions were motivated by malice. Accordingly, Plaintiff is entitled to recover punitive damages.

IX. JURY DEMAND

39. Plaintiff respectfully demands its right to have a trial by jury and has tendered the appropriate jury fee to the District Clerk of Harris County, Texas prior to removal by Defendant.

X. PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff, Ameriforge Group Inc., a Texas corporation, d/b/a AFGlobal Corporation respectfully requests that Defendant, Federal Insurance Company, an Indiana corporation admitted to conduct insurance business in Texas, including Chubb & Son, a division of Federal Insurance Company, be cited to appear and answer, and that on final trial on the merits, Plaintiff have and recover from Defendant the following:

- a. Actual damages in an amount in excess of the minimum jurisdictional limits of this Court;
- b. Pre-judgment at the highest legal rate;
- c. Reasonable and necessary attorneys' fees including fees in responding to an unsuccessful appeal by Defendant;
- d. Taxable Court costs;
- e. Interest on the amount of the claim at the rate of eighteen percent per year as damages;
- f. Statutory damages in the amount of three (3) times the actual damages;
- g. Post-judgment interest on the above amounts, at the highest rate as allowed by law; and,
- h. Such other and further relief, general or special, at law or in equity, to which the Court finds Plaintiff justly entitled.

Respectfully submitted,

CERSONSKY, ROSEN & GARCÍA, P.C.

By: /s/ Jacquelyn D. McAnelly
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ATTORNEY-IN-CHARGE

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**ATTORNEYS FOR PLAINTIFF,
AMERIFORGE GROUP INC., A TEXAS
CORPORATION, D/B/A AFGLOBAL CORPORATION**

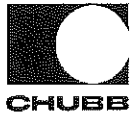
CERTIFICATE OF SERVICE

I hereby certify that on March 10, 2016, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which was served the document on all CM/ECF participants:

John R. Riddle
Toni Scott Reed
Carla C. Crapster
Strasburger & Price LLP
901 Main Street, Suite 4400
Dallas, Texas 775202

Attorneys for Federal Insurance Company

/s/ Jacquelyn D. McAnelly
Jacquelyn D. McAnelly



CRIME DECLARATIONS

FEDERAL INSURANCE COMPANY

A stock insurance company, incorporated under the laws of Indiana, herein called the Company

Capital Center, 251 North Illinois, Suite 1100
 Indianapolis, IN 46204-1927

Item 1. Parent Organization: AF GLOBAL CORPORATION

Item 2. Limits of Liability and Retentions:

Insuring Clauses Applicable to this Coverage Part:	Limits of Liability:	Retentions:
<input checked="" type="checkbox"/> (A) Employee Theft Coverage:	\$3,000,000.00	\$100,000.00
<input checked="" type="checkbox"/> (B) Premises Coverage:	\$3,000,000.00	\$100,000.00
<input checked="" type="checkbox"/> (C) In Transit Coverage:	\$3,000,000.00	\$100,000.00
<input checked="" type="checkbox"/> (D) Forgery Coverage:	\$3,000,000.00	\$100,000.00
<input checked="" type="checkbox"/> (E) Computer Fraud Coverage:	\$3,000,000.00	\$100,000.00
<input checked="" type="checkbox"/> (F) Funds Transfer Fraud Coverage:	\$3,000,000.00	\$100,000.00
<input checked="" type="checkbox"/> (G) Money Order and Counterfeit Currency Fraud Coverage:	\$3,000,000.00	\$5,000.00
<input checked="" type="checkbox"/> (H) Credit Card Fraud Coverage:	\$3,000,000.00	\$5,000.00
<input checked="" type="checkbox"/> (I) Client Coverage	\$100,000.00	\$5,000.00
<input checked="" type="checkbox"/> (J) Expense Coverage:	\$100,000.00	None

Item 3. Coverage applies as follows: Loss Discovered





In consideration of payment of the premium and subject to the Declarations, General Terms and Conditions, and the limitations, conditions, provisions and other terms of this Coverage Part, the Company and the Insureds agree as follows:

I. INSURING CLAUSES

Insuring Clause (A): Employee Theft Coverage

- (A) The Company shall pay the **Parent Organization** for direct loss of **Money, Securities or Property** sustained by an **Insured** resulting from **Theft or Forgery** committed by an **Employee** acting alone or in collusion with others.

Insuring Clause (B): Premises Coverage

- (B) The Company shall pay the **Parent Organization** for direct loss sustained by an **Insured** resulting from:
- (1) **Robbery, Safe Burglary**, or unlawful taking of **Money or Securities** committed by a **Third Party**; or
 - (2) actual destruction or disappearance of **Money or Securities**, within or from the **Premises or Banking Premises**.

Coverage under this Insuring Clause (B) shall also include:

- (3) loss of or damage to **Property** which results from **Robbery** or attempted **Robbery** within the **Premises**;
- (4) loss of or damage to such **Property** contained within any locked vault or safe which results from **Safe Burglary** or attempted **Safe Burglary** within the **Premises**;
- (5) damage to a locked safe, cash drawer, cash box or cash register within the **Premises** by felonious entry or attempted felonious entry or loss by felonious abstraction of such container from within the **Premises**; and
- (6) damage to the **Premises** or to its exterior resulting from **Safe Burglary or Robbery**, committed by a **Third Party**.

Insuring Clause (C): In Transit Coverage

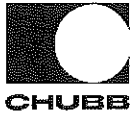
- (C) The Company shall pay the **Parent Organization** for direct loss sustained by an **Insured** resulting from:
- (1) **Robbery** or unlawful taking of **Money or Securities** committed by a **Third Party**; or
 - (2) actual destruction or disappearance of **Money or Securities**;
- while **In Transit** or while temporarily within the home of an **Employee** or a partner of an **Organization**.

Coverage under this Insuring Clause (C) shall also include:

- (3) damage to **Property** which results from **Robbery** while **In Transit**; and
- (4) loss by the unlawful taking of **Property** temporarily within the home of an **Employee** or a partner of an **Organization**, committed by a **Third Party**.

Insuring Clause (D): Forgery Coverage

- (D) The Company shall pay the **Parent Organization** for direct loss sustained by an **Insured** resulting from **Forgery** or alteration of a **Financial Instrument** committed by a **Third Party**.



Insuring Clause (E): Computer Fraud Coverage

- (E) The Company shall pay the **Parent Organization** for direct loss of **Money, Securities** or **Property** sustained by an **Insured** resulting from **Computer Fraud** committed by a **Third Party**.

Insuring Clause (F): Funds Transfer Fraud Coverage

- (F) The Company shall pay the **Parent Organization** for direct loss of **Money** or **Securities** sustained by an **Insured** resulting from **Funds Transfer Fraud** committed by a **Third Party**.

Insuring Clause (G): Money Orders and Counterfeit Currency Fraud Coverage

- (G) The Company shall pay the **Parent Organization** for direct loss sustained by an **Insured** resulting from **Money Orders and Counterfeit Currency Fraud** committed by a **Third Party**.

Insuring Clause (H): Credit Card Fraud Coverage

- (H) The Company shall pay the **Parent Organization** for direct loss sustained by an **Insured** resulting from **Credit Card Fraud** committed by a **Third Party**.

Insuring Clause (I): Client Coverage

- (I) The Company shall pay the **Parent Organization** for direct loss of **Money, Securities** or **Property** sustained by a **Client** resulting from **Theft** or **Forgery** committed by an **Employee** not in collusion with such **Client's** employees.

Insuring Clause (J): Expense Coverage

- (J) The Company shall pay the **Parent Organization** for:
- (1) **Investigative Expenses** resulting from any direct loss covered under Insuring Clauses (A), Employee Theft Coverage; (B), Premises Coverage; (C), In Transit Coverage; (D), Forgery Coverage; (E), Computer Fraud Coverage; (F), Funds Transfer Fraud Coverage; (G), Money Orders and Counterfeit Currency Fraud Coverage; (H), Credit Card Fraud Coverage or (I), Client Coverage; or
 - (2) **Computer Violation Expenses** resulting from any direct loss covered under Insuring Clauses (A), Employee Theft Coverage, (E), Computer Fraud Coverage or (I), Client Coverage;

incurred by any **Organization** in the amount set forth in Item 2 of the Crime Declarations, solely if such covered direct loss is in excess of the Retention applicable to such covered loss. Such amount shall be part of and not in addition to the Limit of Liability applicable to such covered loss.

II. DEFINITIONS

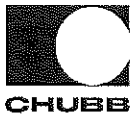
For purposes of this Coverage Part:

Banking Premises means the interior portion of a building occupied by, or the night depository chute or safe maintained by, any bank, trust company or similar financial institution.

Client means a customer of an **Organization** to whom an **Organization** provides goods or services under written contract or for a fee.

Computer Fraud means the unlawful taking of **Money, Securities** or **Property** resulting from a **Computer Violation**.

Computer System means a computer or network of computers, including its input, output, processing, storage and communication facilities, and shall include off-line media libraries.



Computer Violation means an unauthorized:

- (A) entry into or deletion of **Data** from a **Computer System**;
- (B) change to **Data** elements or program logic of a **Computer System**, which is kept in machine readable format; or
- (C) introduction of instructions, programmatic or otherwise, which propagate themselves through a **Computer System**,

directed solely against an **Organization**.

Computer Violation Expenses means reasonable expenses, other than an **Organization's** internal corporate costs (such as **Salary**), incurred by an **Organization** with the Company's prior written consent to reproduce or duplicate damaged or destroyed electronic **Data** or computer programs. If such computer programs cannot be duplicated from other computer programs, then **Computer Violation Expenses** shall also include reasonable costs incurred for computer time, computer programmers, technical experts or consultants to restore the computer programs to substantially the same level of operational capability immediately preceding the covered direct loss. **Computer Violation Expenses** shall not include expenses incurred by any **Client**.

Contractual Independent Contractor means any natural person independent contractor while in the regular service of an **Organization** in the ordinary course of such **Organization's** business, pursuant to a written contract between such **Organization**, and either (A) such natural person independent contractor, or (B) any other entity acting on behalf of such natural person independent contractor, for services.

Credit Card Fraud means the **Forgery** or alteration of, on or in, any written instrument required in connection with any credit card issued to an **Organization** or at the request of an **Organization**, to any partner, officer or **Employee** of an **Organization**.

Data means information contained in records, manuscripts, accounts, microfilms, tapes or other records, which are processed and stored in a **Computer System**.

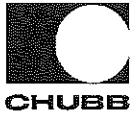
Discovery or **Discovered** means knowledge acquired by an **Executive** or **Insurance Representative** of an **Insured** which would cause a reasonable person to believe a covered loss has occurred or an occurrence has arisen that may subsequently result in a covered loss. This includes loss:

- (A) sustained prior to the inception date of any coverage under this Coverage Part;
- (B) which does not exceed the Retention set forth in Item 2 of the Crime Declarations; or
- (C) the exact amount or details of which are unknown,

provided that **Discovery** or **Discovered** shall not include knowledge acquired by an **Executive** or **Insurance Representative** of an **Insured** acting alone or in collusion with an **Employee**, or the knowledge possessed by any **Executive** or **Insurance Representative** who is a participant in the **Theft** or **Forgery**.

Employee means any:

- (A) natural person in the regular service of an **Organization** in the ordinary course of such **Organization's** business, whom such **Organization** governs and directs in the performance of such service, including a part-time, seasonal, leased and temporary employee, intern or volunteer;
- (B) **Executive** while performing acts within the scope of the usual duties of an **Employee**;
- (C) **Contractual Independent Contractor**;
- (D) natural person fiduciary, trustee, administrator or **Employee**, as defined in Subsections (A) and (B) of this definition, of an **ERISA Plan** and any other natural person, who any of which handle **ERISA Plan** assets and are required to be bonded by an **Organization** in connection with such **ERISA Plan** by Title 1 of the Employee Retirement Income Security Act of 1974, as amended, and as amended by the Pension Protection Act of 2006;
- (E) former or retired **Employee**, as defined in Subsections (A) and (B) of this definition, of the **Organization**, retained as a consultant (as evidenced by a written contract for services) to the **Organization**; or



- (F) **Employee**, as defined in Subsections (A) and (B) of this definition, of the **Organization**, while on leave for military services.

ERISA Plan means any Employee Benefit Plan, Pension Benefit Plan or Welfare Benefit Plan, defined and required to be bonded under Title 1 of the Employee Retirement Income Security Act of 1974, as amended, and as amended by the Pension Protection Act of 2006, which is operated solely by an **Organization** or jointly by an **Organization** and a labor organization for the benefit of **Employees** and which existed on or before the inception of this Policy or which is created or acquired after the inception of this Policy, provided that **ERISA Plan** shall not include any multi-employer plan.

Executive means any natural person specified below:

- (A) a duly elected or appointed director, officer, trustee, in-house general counsel or duly constituted committee member of any **Organization** incorporated in the United States of America;
- (B) a duly elected or appointed: (1) manager or member of the Board of Managers or equivalent position; (2) duly constituted committee member; (3) in-house general counsel; or (4) trustee, of any **Organization** formed as a limited liability company in the United States of America; or
- (C) a holder of an equivalent position to those described in Subsections (A) or (B) above in any **Organization** incorporated, formed or organized anywhere in the world.

Financial Instrument means checks, drafts or similar written promises, orders or directions to pay a sum certain in money, that are made, drawn by or drawn upon an **Organization** or by anyone acting as an **Organization's** agent, or that are purported to have been so made or drawn.

Forgery means the signing of another natural person's name with the intent to deceive, but does not mean a signature that includes, in whole or in part, one's own name, with or without authority, in any capacity for any purpose. Mechanically or electronically produced or reproduced signatures shall be treated the same as hand-written signatures.

Funds Transfer Fraud means fraudulent written, electronic, telegraphic, cable, teletype or telephone instructions (other than **Forgery**), purportedly issued by an **Organization**, and issued to a financial institution directing such institution to transfer, pay or deliver **Money** or **Securities** from any account maintained by such **Organization** at such institution, without such **Organization's** knowledge or consent.

Insurance Representative means an **Employee**, as defined in Subsections (A) and (B) of the definition of **Employee**, including a risk manager, designated to represent an **Insured** for the purpose of effecting and maintaining insurance.

Insured means any **Organization** and any **Sponsored Plan**.

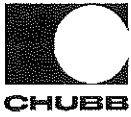
In Transit means being conveyed outside the **Premises**, from one person or place to another, by the **Organization** within the custody of:

- (A) an **Employee** or a partner of an **Organization**; or
- (B) a person duly authorized by such **Organization** to have custody of **Money**, **Securities** or **Property**,

provided that such conveyance begins immediately upon receipt of **Money**, **Securities** or **Property** by the person(s) described in Subsections (A) or (B) above, from such **Organization**, and ceases immediately upon delivery to the designated recipient or its agent.

Investigative Expenses means reasonable expenses, other than an **Organization's** internal corporate costs (such as **Salary**), incurred by an **Organization** with the Company's prior written consent to establish the existence and amount of a covered loss. **Investigative Expenses** shall not include expenses incurred by any **Client**.

Money means currency, coin, bank notes and bullion.



Money Orders and Counterfeit Currency Fraud means the good faith acceptance by an **Organization**:

- (A) in exchange for merchandise, **Money** or services, of any post office or express money order, issued or purporting to have been issued by any post office or express company, if such money order is not paid upon presentation; or
- (B) in the regular course of business, of counterfeit paper currency.

Non-ERISA Plan means any employee benefit plan not subject to Title 1 of the Employee Retirement Income Security Act of 1974, as amended, and as amended by the Pension Protection Act of 2006, which is operated solely by an **Organization** or jointly by an **Organization** and a labor organization for the benefit of **Employees** and which existed on or before the inception of this Policy or which is created or acquired after the inception of this Policy, provided that **Non-ERISA Plan** shall not include any multi-employer plan.

Premises means the interior portion of a building occupied by an **Organization** in conducting its business.

Property means tangible property other than **Money** or **Securities**.

Robbery means the unlawful taking of **Money**, **Securities** or **Property** from the custody of an **Employee** or other person (except a person acting as a watchman, porter or janitor) duly authorized by an **Organization** to have custody of such **Money**, **Securities** or **Property**, by violence or threat of violence, committed in the presence and cognizance of such **Employee** or other person.

Safe Burglary means the unlawful taking of **Money**, **Securities** or **Property** by forcible or violent entry evidenced by visible marks, from a locked vault or safe located within the **Premises**.

Salary means compensation an **Organization** pays an **Employee**, including bonus, commission, incentive payments, and the cost of health, welfare and pension benefits.

Securities means any negotiable and non-negotiable instruments representing either **Money** or **Property**, including revenue and other stamps in current use, casino chips, tokens and tickets, provided that **Securities** shall not include **Money**.

Sponsored Plan means any **ERISA Plan** and **Non-ERISA Plan**.

Theft means the unlawful taking of **Money**, **Securities** or **Property** to the deprivation of:

- (A) an **Insured**, solely for the purposes of Insuring Clause (A), Employee Theft Coverage; or
- (B) a **Client**, solely for the purposes of Insuring Clause (I), Client Coverage.

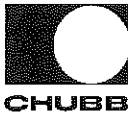
Third Party means a natural person other than:

- (A) an **Employee**; or
- (B) a natural person acting in collusion with an **Employee**.

III. EXCLUSIONS

(A) No coverage will be available for:

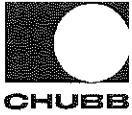
- (1) Trading
 loss resulting directly or indirectly from any authorized or unauthorized trading of **Money**, **Securities** or **Property**, whether or not in the name of an **Insured** and whether or not in a genuine or fictitious account, provided that this Exclusion (A)(1) shall not apply to direct losses caused by **Theft** or **Forgery** which result in improper financial gain to an **Employee** (direct losses as used herein shall mean only the amount of improper financial gain to such **Employee**, which shall not include **Salary**, commissions, fees or other compensation, including promotions and raises associated with employment, paid by the **Insured** to such **Employee**);



-
- (2) Trade Secrets/Confidential Information
loss of trade secrets, confidential processing methods or other confidential information of any kind;
- (3) Partner
loss due to **Theft** or **Forgery** committed by a partner of an **Organization**, whether acting alone or in collusion with others, provided that if such **Theft** or **Forgery** would otherwise be covered under Insuring Clause (A), Employee Theft Coverage, or (I), Client Coverage, this Exclusion (A)(3) shall not apply to the extent coverage under this Coverage Part is excess of the amount of such partner's percentage ownership of such **Organization**, on the day immediately preceding the date of **Discovery**, multiplied by such **Organization's** total assets as reflected in such **Organization's** most recent audited financial statements;
- (4) War
loss or damage due to declared or undeclared war, civil war, insurrection, rebellion, revolution, military, naval or usurped power, governmental intervention, expropriation or nationalization, or any act or condition incident to any of the foregoing;
- (5) Nuclear
loss or damage due to nuclear reaction, nuclear radiation or radioactive contamination, or any act or condition incident to any of the foregoing;
- (6) Potential Income
loss of income not realized as the result of a covered loss;
- (7) Indirect/Consequential
indirect or consequential loss of any kind, provided that this Exclusion (A)(7) shall not apply to:
- (a) otherwise covered **Investigative Expenses** and **Computer Violation Expenses** under Insuring Clause (J), Expense Coverage; or
 - (b) the cost of reproducing information contained in any lost or damaged manuscripts, records, accounts, microfilms, tapes, or other records resulting directly from a covered loss, provided that the Company's maximum liability for the cost of reproducing information contained in any lost or damaged manuscripts, records, accounts, microfilms, tapes, or other records resulting directly from a covered loss sustained shall be \$25,000, which amount shall be part of, and not in addition to, the applicable Limit of Liability set forth in Item 2 of the Crime Declarations.
- (8) Data Fees, Costs or Expenses
fees, costs or expenses incurred or paid:
- (a) as a result of the reconstitution of **Data** if an **Organization** knowingly used illegal copies of programs;
 - (b) to render the **Data** usable by replacement processing equipment;
 - (c) to design, update or improve software or programs or to perfect their operation or performance; or
 - (d) as a result of an alteration in **Data** held on magnetic media due to the effect of magnetic fields, their incorrect use or the obsolescence of the computer or its facilities;
- (9) Fire
loss due to fire, provided that this Exclusion (A)(9) shall not apply to:
- (a) loss of **Money** or **Securities**; or
 - (b) damage to any safe or vault caused by the application of fire thereto for the purposes of **Safe Burglary**;

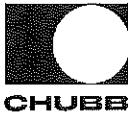


- (10) Legal Fees, Costs or Expenses
fees, costs or expenses incurred or paid in defending or prosecuting any legal proceeding or claim, provided that this Exclusion (A)(10) shall not apply to the coverage provided under Section V, Legal Expenses Extension;
- (11) Voluntary Exchange or Purchase
loss due to an **Insured** knowingly having given or surrendered **Money, Securities or Property** in any exchange or purchase with a **Third Party**, not in collusion with an **Employee**, provided that this Exclusion (A)(11) shall not apply to otherwise covered loss under Insuring Clauses (A), Employee Theft Coverage, (G), Money Orders and Counterfeit Currency Fraud Coverage, or (I), Client Coverage, or otherwise covered loss of **Property** under Insuring Clause (E), Computer Fraud Coverage;
- (12) Advantage
loss sustained by one **Insured** to the advantage of any other **Insured**;
- (13) Custodial
loss of or damage to **Money, Securities or Property** while in the custody of any bank, trust company, similar recognized place of safe deposit, armored motor vehicle company or any person who is duly authorized by an **Organization** to have custody of such **Money, Securities or Property**, provided that this Exclusion (A)(13) shall not apply to the extent that coverage under this Coverage Part is excess of the amount recovered or received by such **Organization** under:
- (a) such **Organization's** contract, if any, with, or insurance carried by, any of the foregoing;
or
 - (b) any other insurance or indemnity in force which would cover the loss in whole or in part;
or
- (14) Authorized Representative
loss or damage due to **Theft, Forgery, Computer Fraud, Funds Transfer Fraud, Money Orders And Counterfeit Currency Fraud, Credit Card Fraud** or other fraudulent, dishonest or criminal act (other than **Robbery or Safe Burglary**) committed by any authorized representative of an **Insured**, whether acting alone or in collusion with others, provided that this Exclusion (A)(14) shall not apply to otherwise covered loss under Insuring Clauses (A), Employee Theft Coverage, or (I), Client Coverage, resulting from **Theft or Forgery** committed by an **Employee** acting in collusion with such authorized representative.
- (B) In addition to the Exclusions in Subsection (A) above, no coverage will be available under:
- (1) Insuring Clauses (A), Employee Theft Coverage, or (I), Client Coverage, for:
 - (a) Broker/Independent Contractor
loss caused by any broker, factor, commission merchant, consignee, contractor, independent contractor (other than a **Contractual Independent Contractor**), or other agent or representative of the same general character;
 - (b) Prior Dishonesty
loss caused by an **Employee** which is sustained by an **Insured**:
 - (i) after an **Executive or Insurance Representative** becomes aware of a:
 - (1) **Theft**;
 - (2) **Forgery**; or
 - (3) other fraudulent, dishonest or criminal act,which is valued at one thousand dollars (\$1,000) or more, committed by such **Employee** while employed with or in the service of an **Insured**;



- (ii) after an **Executive** or **Insurance Representative** becomes aware of a **Theft, Forgery** or other fraudulent, dishonest or criminal act, involving:
 - (1) **Money**;
 - (2) **Securities**; or
 - (3) other property,

which is valued at twenty-five thousand dollars (\$25,000) or more, committed by such **Employee** prior to employment or service with an **Insured**; or
 - (iii) more than ninety (90) days following the termination of such **Employee**;
 - (2) Insuring Clause (B), Premises Coverage, or (C), In Transit Coverage, for:
 - (a) Other Insuring Clauses
loss or damage due to **Forgery, Computer Fraud, Funds Transfer Fraud, Money Orders and Counterfeit Currency Fraud** or **Credit Card Fraud**; or
 - (b) Mail/Carrier for Hire
loss of or damage to **Money, Securities** or **Property** while in the mail or in the custody of a carrier for hire other than an armored motor vehicle company;
 - (3) Insuring Clauses (B), Premises Coverage, (C), In Transit Coverage, (E), Computer Fraud Coverage, or (F), Funds Transfer Fraud Coverage, for:
 - (a) Kidnap, Ransom or Extortion
loss or damage as a result of a kidnap, ransom or other extortion payment (as distinct from **Robbery**) surrendered to any person as a result of a threat to do bodily harm to any person or a threat to do damage to the **Premises** or other property;
 - (4) Insuring Clause (D), Forgery Coverage, for:
 - (a) Forgery or Alteration
loss due to **Forgery** or alteration of:
 - (i) any **Financial Instrument** committed by any **Third Party** in collusion with any **Employee**; or
 - (ii) any registered or coupon obligations issued or purported to have been issued by the **Insured**, or any coupons whether attached or detached; or
 - (5) Insuring Clause (H), Credit Card Fraud Coverage, for:
 - (a) Forgery or Alteration (Credit Card)
loss caused by any forgery or alteration of, on or in any written instrument, provided that this Exclusion (B)(5) shall not apply if:
 - (i) the provisions, conditions and other terms under which the involved credit card was issued were fully complied with; and
 - (ii) the **Organization** is legally liable to the issuer of such credit card for such loss.
- (C) Loss Sustained Option
In addition to the Exclusions in Subsections (A) and (B) above and if the Loss Sustained option is purchased, as set forth in Item 3 of the Crime Declarations, no coverage will be available for:
 - (1) loss unless sustained by any **Insured** prior to the termination of this Coverage Part as to such **Insured** and **Discovered** and written notice thereof is given to the Company within sixty (60) days following such termination;



- (2) loss unless sustained prior to the termination of any Insuring Clause or any particular coverage offered under any Insuring Clause and **Discovered** and written notice thereof is given to the Company within sixty (60) days following such termination; or
- (3) loss unless sustained prior to the termination of this Coverage Part in its entirety, and **Discovered** and written notice thereof is given to the Company:
 - (a) within sixty (60) days following such termination, if this Coverage Part is not renewed with the Company;
 - (b) prior to such termination, if this Coverage Part is renewed with the Company; or
 - (c) within one (1) year following such termination, if the termination results from the voluntary liquidation or voluntary dissolution of the **Parent Organization**.

(D) Loss Discovered Option

In addition to the Exclusions in Subsections (A) and (B) above and if the Loss Discovered option is purchased, as set forth in Item 3 of the Crime Declarations, no coverage will be available for:

- (1) loss unless sustained by any **Insured**, and **Discovered** prior to the termination of this Coverage Part as to such **Insured**;
- (2) loss unless sustained, and **Discovered** prior to the termination of any Insuring Clause or any particular coverage offered under any Insuring Clause;
- (3) loss unless sustained, and **Discovered** prior to the termination of this Coverage Part in its entirety;
- (4) loss unless sustained prior to the termination of this Coverage Part and **Discovered** within one (1) year following such termination if the termination results from the voluntary liquidation or voluntary dissolution of the **Parent Organization**; or
- (5) any loss that an **Insured** is aware of prior to the inception date of this Policy,

provided that in no event will coverage be available under this Coverage Part for such loss if such loss is covered under any renewal or replacement of this Coverage Part or any Insuring Clause or any particular coverage offered under any Insuring Clause.

IV. ERISA PLAN EXTENSION

- (A) Solely with respect to loss sustained by an **ERISA Plan**, payment by the Company for covered loss shall be to the **ERISA Plan** sustaining such loss. If such payment is in excess of the amount of coverage required by the Employee Retirement Income Security Act of 1974, as amended, for such **ERISA Plan(s)**, such excess shall be held for the use and benefit of any other named **ERISA Plan(s)** should such **ERISA Plan(s)** also discover loss recoverable hereunder.
- (B) With respect to each **ERISA Plan**:
 - (1) if covered loss is sustained by any **ERISA Plan** which does not have any employer securities, the Limit of Liability applicable to such covered loss shall be the greater of:
 - (a) \$1,000; or
 - (b) ten percent (10%) of the **ERISA Plan's** funds handled as of the beginning of such **ERISA Plan's** fiscal year,
up to \$500,000; or



- (2) if covered loss is sustained by any **ERISA Plan** which does have any employer securities, the Limit of Liability applicable to such covered loss shall be the greater of;
- (a) \$1,000; or
 - (b) ten percent (10%) of the **ERISA Plan's** funds handled as of the beginning of such **ERISA Plan's** fiscal year,
- up to \$1,000,000,

provided that, in all events, if the applicable Limit of Liability set forth in Item 2(A) of the Crime Declarations:

- (i) is less than or equal to the amounts set forth in Paragraphs (B)(1) or (B)(2) above, then the applicable Limit of Liability shall be amended to the respective amounts set forth in Paragraphs (B)(1) or (B)(2) above; or
- (ii) is greater than the amounts set forth in Paragraphs (B)(1) or (B)(2) above, then the applicable Limit of Liability for each **ERISA Plan** shall be the amounts set forth in Paragraphs (B)(1) or (B)(2) above, with the remaining limit in the amount by which the applicable Limit of Liability set forth in Item 2(A) of the Crime Declarations exceeds the amounts in Paragraphs (B)(1) or (B)(2) above to be allocated equally between all **ERISA Plans** sustaining the loss.

(C) Solely with respect to loss sustained by an **ERISA Plan**:

- (1) Insuring Clause (A), Employee Theft Coverage, is replaced with the following:

The Company shall pay an **ERISA Plan** for direct loss of **Money, Securities or Property** sustained by such **ERISA Plan** resulting from a fraudulent or dishonest act, including larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, wrongful conversion and willful misapplication, committed by an **Employee** acting alone or in collusion with others.

- (2) The words "sixty (60) days" are deleted from the exclusions applicable to this Coverage Part, wherever they appear, and the words "one (1) year" are substituted in place thereof.

(D) No Retention shall apply to loss sustained by an **ERISA Plan** covered under this Coverage Part.

V. LEGAL EXPENSES EXTENSION

In addition to the Limits of Liability set forth in the Crime Declarations, the Company shall pay the **Parent Organization**:

- (A) as a result of loss covered under Insuring Clause (D), Forgery Coverage, reasonable court costs and attorneys' fees incurred and paid, with the Company's prior written consent, in defending an **Organization** or an **Organization's** bank in any legal proceeding brought against it to enforce payment of a **Financial Instrument**; and
 - (B) as a result of loss covered under Insuring Clause (H), Credit Card Fraud Coverage, reasonable court costs and attorneys' fees incurred and paid with the Company's prior written consent in defending an **Organization** in any legal proceeding brought against it to enforce payment of a written instrument, required in connection with any credit card.
-



VI. PROOF OF LOSS AND LEGAL PROCEEDINGS

- (A) Knowledge possessed by any **Insured** or **Discovery** shall be deemed knowledge possessed by or **Discovery** by all **Insureds**.
- (B) It is a condition precedent to coverage hereunder that, upon **Discovery**, the **Parent Organization** will:
 - (1) give written notice to the Company at the earliest practicable moment, and in no event later than 180 days after such **Discovery**;
 - (2) furnish affirmative proof of loss with full particulars to the Company at the earliest practicable moment, and in no event later than 180 days after such **Discovery**;
 - (3) submit to examination under oath at the Company's request;
 - (4) produce all pertinent records at such reasonable times and places as the Company shall designate; and
 - (5) provide full cooperation with the Company in all matters pertaining to a loss or claim.
- (C) The **Parent Organization** may offer a comparison between an **Organization's** inventory records and actual physical count of its inventory to prove the amount of loss, only where an **Organization** establishes wholly apart from such comparison that it has sustained a covered loss, caused by an **Employee**.
- (D) No **Insured** shall institute legal proceedings against the Company:
 - (1) after two (2) years immediately following any **Discovery**; or
 - (2) to recover a judgment or settlement against it or its bank resulting from **Forgery, Credit Card Fraud** or related legal expenses as set forth in Section V, Legal Expenses Extension, after two (2) years immediately following the date upon which such judgment shall become final or settlement was entered.

VII. LIMITS OF LIABILITY

- (A) The Company's maximum liability for each loss shall not exceed the Limit of Liability applicable to such loss set forth in Item 2 of the Crime Declarations, regardless of the number of **Insureds** sustaining the loss, provided that with respect to an **ERISA Plan**, the Limit of Liability shall apply in accordance with the terms of Section IV, ERISA Plan Extension.
- (B) If a direct loss is covered under more than one Insuring Clause, the maximum amount payable under this Coverage Part shall not exceed the largest applicable Limit of Liability of any such Insuring Clause.
- (C) All loss resulting from a single act or any number of acts of the same **Employee** or **Third Party**, and all loss whether such act or acts occurred before or during the **Policy Period**, will be treated as a single loss and the applicable Limit of Liability set forth in Item 2 of the Crime Declarations will apply, subject to Section X, Liability for Prior Losses.

VIII. RETENTION

- (A) The Company's liability under this Coverage Part shall apply only to that part of each loss which is in excess of the applicable Retention set forth in Item 2 of the Crime Declarations.
- (B) If an **Insured** receives payment under another policy or bond, after applying a deductible or retention, for loss also covered hereunder, then the applicable Retention set forth in Item 2 of the Crime Declarations shall be reduced by the deductible or retention previously applied to such loss.

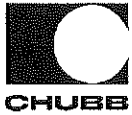


IX. OWNERSHIP

- (A) Solely for the purposes of Insuring Clauses (A), Employee Theft Coverage; (B), Premises Coverage; (C), In Transit Coverage; (D), Forgery Coverage; (E), Computer Fraud Coverage; (F), Funds Transfer Fraud Coverage; (G), Money Orders and Counterfeit Currency Fraud Coverage and (H), Credit Card Fraud Coverage, the Company's liability under this Coverage Part shall only apply to **Money, Securities** or **Property** owned by an **Organization** or for which the **Organization** is legally liable, or held by the **Organization** in any capacity whether or not the **Organization** is liable, provided that:
- (1) the Company's liability will not apply to damage to the **Premises** unless the **Organization** is the owner of such **Premises** or is legally liable for such damage; or
 - (2) with respect to Insuring Clause (A), Employee Theft Coverage, the Company's liability will not apply to **Money, Securities** or **Property** of a **Client**.
- (B) Solely for the purposes of Insuring Clause (I), Client Coverage, the Company's liability under this Coverage Part will only apply to **Money, Securities** or **Property**:
- (1) owned by a **Client**, which is held by an **Organization** in any capacity or for which the **Organization** is legally liable; or
 - (2) held or owned by a **Client**, for which the **Client** is legally liable.

X. LIABILITY FOR PRIOR LOSSES

- (A) If the Loss Sustained option is purchased as set forth in Item 3 of the Crime Declarations:
- (1) coverage will be available for loss sustained prior to the inception date of this Policy, or the effective date of coverage for any additional **Insureds**, or the effective date of any coverage added by endorsement, subject to the following:
 - (a) an **Organization** or some predecessor in interest of such **Organization** carried a prior bond or policy, which at the time such prior loss was sustained, afforded some or all of the coverage of an Insuring Clause under this Coverage Part applicable to such prior loss;
 - (b) such coverage continued without interruption from the time such loss was sustained until the inception date or effective date(s) specified above;
 - (c) such prior loss was first **Discovered** by an **Insured** after the time allowed for discovery under the last such bond or policy; and
 - (d) some or all of the coverage of an Insuring Clause under this Coverage Part would be applicable to such prior loss;
 - (2) if such prior bond or policy carried by an **Insured** or predecessor in interest of such **Insured** was issued by the Company or any subsidiary or affiliate of The Chubb Corporation, such prior bond or policy shall terminate as of the inception of this Policy and such prior bond or policy shall not cover any loss not discovered and noticed to the Company prior to the inception of this Policy, provided that this Paragraph (2) shall not apply to:
 - (a) any loss (i) sustained in its entirety and discovered prior to the inception date of this Policy, and (ii) notified to the Company in writing on or after the inception date of this Policy, provided such notice is in accordance with any applicable reporting, notice or exclusionary provision of the Crime coverage section of such prior bond or policy; or
 - (b) any loss (i) sustained in its entirety prior to the inception date of this Policy, (ii) and discovered and notified to the Company in writing within sixty (60) days following termination of the Crime coverage section of such prior bond or policy, provided such notice is in accordance with any applicable reporting, notice or exclusionary provision of the Crime coverage section of such prior bond or policy; and



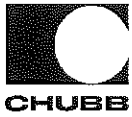
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- (3) An **Insured** shall neither be entitled to a separate recovery under each policy in force at the time any part of the prior loss was sustained, nor shall the **Insured** be entitled to recover the sum of the limits of liability of any such policies. The Company's maximum liability for the prior loss shall not exceed the lesser of either the limit of liability of the policy immediately preceding this Coverage Part under which part of the prior loss was sustained, or the applicable Limit of Liability set forth in Item 2 of the Crime Declarations.
- (B) If the Loss Discovered option is purchased as set forth in Item 3 of the Crime Declarations:
- (1) coverage will be available for loss sustained at any time and **Discovered** during the **Policy Period**, provided that coverage for loss sustained prior to the effective date of this Coverage Part, or the effective date of coverage for any additional **Insureds**, or the effective date of any coverage added by endorsement, is subject to the following:
- (a) if an **Organization** or some predecessor in interest of such **Organization** carried a prior bond or policy which afforded coverage for a loss sustained during the period of such prior bond or policy and such prior bond or policy was not issued by the Company or any subsidiary or affiliate of The Chubb Corporation and such loss was first **Discovered** by an **Insured** prior to the expiration of the time allowed for discovery under the last such policy, then no coverage shall be available under this Coverage Part, unless the total amount of covered loss exceeds the limit of liability of the last such bond or policy carried by the **Organization** or predecessor in interest of such **Organization**, and the Company's Limit of Liability for any such loss will be in excess of the limit of liability of the last bond or policy subject to all of the terms and conditions of this Coverage Part; or
- (b) if an **Organization** or some predecessor in interest of such **Organization** carried a prior bond or policy which afforded coverage for a loss sustained during the period of such prior bond or policy and such prior bond or policy was issued by the Company or any subsidiary or affiliate of The Chubb Corporation then such prior bond or policy shall terminate as of the inception of this Policy and such prior bond or policy shall not cover any loss not discovered and noticed to the Company prior to the inception of this Policy and then the Company's Limit of Liability for such loss shall be the applicable Limit of Liability set forth in Item 2 of the Crime Declarations.

XI. NON-ACCUMULATION OF LIABILITY

- (A) When there is more than one **Insured**, the maximum liability of the Company for loss sustained by one or all **Insureds** shall not exceed the amount for which the Company would be liable if all losses were sustained by any one **Insured**.
- (B) Regardless of the number of years this coverage remains in effect and the total premium amounts due or paid, the limit of liability of the Company with respect to any loss shall not be cumulative from **Policy Year** to **Policy Year** or from **Policy Period** to **Policy Period**.

XII. OTHER INSURANCE

If an **Insured** or any other party in interest in any loss covered by this Coverage Part has any bond, indemnity or insurance which would cover such loss in whole or in part in the absence of this Coverage Part, then this Coverage Part shall be null and void to the extent of the amount recoverable or received under such other bond, indemnity, or insurance; but this Coverage Part shall cover such loss, subject to its exclusions, conditions and other terms, only to the extent of the amount of such loss in excess of the amount recoverable or received under such other bond, indemnity or insurance.



XIII. TERMINATION OF PRIOR BONDS OR POLICIES

Any prior bonds or policies issued by the Company or any subsidiary or affiliate of The Chubb Corporation shall terminate, if not already terminated, as of the inception of this Policy.

XIV. VALUATION AND FOREIGN CURRENCY

The Company shall pay:

- (A) the actual market value of lost, damaged or destroyed **Securities** at the closing price of such **Securities** on the business day immediately preceding the day on which a loss is **Discovered**; or the cost of replacing **Securities**, whichever is less, plus the cost to post a Lost Instrument Bond;
 - (B) the cost of blank books, pages or tapes or other blank materials to replace lost or damaged books of account or other records;
 - (C) the least of:
 - (1) the actual cash value of the **Property**; or
 - (2) the cost to repair or replace **Property**, other than precious metals, with that of similar quality and value,

at the time the **Parent Organization** complies with Section VI, Proof of Loss and Legal Proceedings, regarding the furnishing of proof of loss;
 - (D) the United States of America dollar value of foreign currency based on the rate of exchange published in The Wall Street Journal on the day loss involving foreign currency is **Discovered**; or
 - (E) the United States of America dollar value of any precious metals based on the amount published in The Wall Street Journal Cash Prices, Precious Metals, on the day loss involving such precious metals is **Discovered**.
-

ENDORSEMENT/RIDER

Coverage Section: ForeFront Portfolio 3.0 Crime Coverage Part Federal

Effective date of
this endorsement/rider: October 31, 2013

Federal Insurance Company

Endorsement/Rider No. 1

To be attached to and
form a part of Policy No. 8234-4543

Issued to: AF GLOBAL CORPORATION

**TEXAS AMENDATORY ENDORSEMENT
TO THE CRIME COVERAGE PART**

In consideration of the premium charged, it is agreed that Subparagraph (C)(1), Loss Sustained Option, of Section III, Exclusions, of this Coverage Part, is deleted and replaced with the following:

- (1) loss unless sustained by an **Insured** prior to the termination of this Coverage Part as to such **Insured**, and **Discovered** and written notice thereof is given to the Company within one (1) year following such termination;

The title and any headings in this endorsement/rider are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this Policy shall remain unchanged.



Authorized Representative

ENDORSEMENT/RIDER

Coverage Section: ForeFront Portfolio 3.0 Crime Coverage Part Federal

Effective date of
this endorsement/rider: October 31, 2013

Federal Insurance Company

Endorsement/Rider No. 2

To be attached to and
form a part of Policy No. 8234-4543

Issued to: AF GLOBAL CORPORATION

RECOVERIES SECTION ADDED ENDORSEMENT

In consideration of the premium charged, it is agreed that this Coverage Part is amended to include the following section:

RECOVERIES

- (A) Recoveries for any loss covered under this Coverage Part, whether effected by the Company or by an **Insured**, less the cost of recovery, shall be distributed as follows:
- (1) first, to an **Insured** for the amount of such loss, otherwise covered, in excess of the applicable Limits of Liability;
 - (2) second, to the Company for the amount of such loss paid to an **Insured** as covered loss;
 - (3) third, to an **Insured** for the Retention applicable to such loss;
 - (4) fourth, to an **Insured** for the amount of such loss not covered under this coverage section.
- (B) Recovery from reinsurance or indemnity of the Company shall not be deemed a recovery hereunder.

The title and any headings in this endorsement/rider are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this Policy shall remain unchanged.



Authorized Representative

ENDORSEMENT/RIDER

Coverage Section: ForeFront Portfolio 3.0 Crime Coverage Part Federal

Effective date of
this endorsement: October 31, 2013

Company: Federal Insurance Company

Endorsement No. 3

To be attached to and
form a part of Policy No. 8234-4543

Issued to: AF GLOBAL CORPORATION

PRIVACY AND DATA BREACH EXCLUSIONS ENDORSEMENT

In consideration of the premium charged, it is agreed that Section III, Exclusions of this coverage part, is amended as follows:

1. Exclusion III.(A)(2) is deleted.
2. No coverage will be available for:
 - (i) loss involving the disclosure of an **Insured's** or another entity or person's confidential or personal information while in the care, custody or control of an **Insured** including, but not limited to, patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any similar type of nonpublic information;
 - (ii) loss involving the use of another entity or person's confidential or personal information while in the care, custody or control of an **Insured** including, but not limited to, patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any similar type of nonpublic information; or
 - (iii) fees, costs, fines, penalties or any other expenses incurred by an **Insured** which result, directly or indirectly, from the access to or disclosure of another entity or person's confidential or personal information, including but not limited to, patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any similar type of nonpublic information,

provided, however, that the above exclusions shall not apply to loss that is otherwise covered under Insuring Clause (F), Funds Transfer Fraud Coverage.

The title and any headings in this endorsement are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this policy shall remain unchanged.

A handwritten signature in black ink, appearing to be "P. M. W.", written in a cursive style.

Authorized Representative

Proof of Loss
AFGlobal Corporation

Commercial Crime

Policy Number: [REDACTED]

Policy Period: October 31, 2013 to October 31, 2014

This Proof of Loss is being submitted to Federal Insurance Company under policy number [REDACTED] issued to AFGlobal Corporation for the period of October 31, 2013 to October 31, 2014. The policy limit is \$3,000,000 subject to a \$100,000 deductible. AFGlobal Corporation suffered a loss of \$480,000 as a result of a fraudulent transfer of funds as described below.

FACTUAL BACKGROUND

On Wednesday, May 21, 2014 and continuing to Tuesday May 27, 2014 one employee from AFGlobal Corporation ordered a wire transfer to Agriculture Bank of China, based on instructions received from a person he believed was Mr. Gean Stalcup, the CEO of AFGlobal Corporation. The person sending the instructions was not Mr. Gean Stalcup and is referred to hereafter as the "Imposter." The employee was Glen Wurm, Director of Accounting of AFGlobal Corporation. The Imposter's email read:

"Glen, I have assigned you to manage file T521. This is a strictly confidential financial operation, to which takes priority over other tasks. Have you already been contacted by Steven Shapiro (attorney from KPMG)? This is very sensitive, so please only communicate with me through this email, in order for us not to infringe SEC regulations. Please do not speak with anyone by email or phone regarding this. Regards, Gean Stalcup."

Approximately 30 minutes later, Mr. Wurm was contacted via phone and via email by Mr. Shapiro stating that due diligence fees associated with the China acquisition in the amount of USD 480,000.00 were needed. Mr. Shapiro followed up via email with wiring instructions.

Mr. Wurm engaged our global Cash Manager and our Treasurer with transferring the funds under the full belief he was being instructed to do so by the CEO of the company and that confidentiality was very important. After the funds transfer was made, Mr. Wurm did not receive any further correspondence from the Imposter until Tuesday May 27, 2014 when the Imposter acknowledged receipt of the funds and asked Mr. Wurm to send an additional USD 18 million. It was at this time Mr. Wurm became suspicious and told the Imposter that he could not wire the funds without at a minimum informing his immediate supervisor and the company Treasurer. Mr. Wurm then immediately alerted his immediate supervisor and the officers of the company of his suspicion: Chief Accounting Officer (Tom Edgeller), Treasurer (Perry Ewing), General Counsel (Tom Giles), and Chief Financial Officer (Brian Fontana).

The Imposter seemed to know the normal procedures of the company and also that Gean Stalcup had a long-standing, very personal and familiar relationship with Mr. Wurm -- sufficient enough that Mr. Wurm would not question a request from the CEO. Once Mr. Edgeller and the aforementioned officers of the company realized that they had been a victim of fraud, they reacted quickly to try and retrieve the funds. The Treasurer and the Cash Manager reacted rapidly and attempted to recall the wire from Bank of America. Moreover, they instructed Bank of America to alert all the banks involved (i.e. beneficiary banks) and their security departments of the fraud. Finally, they filed a police report with the Houston Police Department.

DATE OF LOSS

The funds were transferred on Wednesday May 21, 2014

DISCOVERY OF THE FRAUD

Gean Stalcup was informed of the fraud on Tuesday May 27, 2014. The Treasurer received an email from Bank of America which confirmed that the funds were transferred on Wednesday May 21, 2014. Moreover, they were informed that the beneficiary account had been zeroed out and closed.

CLAIM AMOUNT

A wire transfer of USD 480,000 was made to Agricultural Bank of China.

DOCUMENTATION OF THE LOSS

Documentation to fully substantiate the loss includes: Banking records and email correspondence.

NOTIFICATION TO INSURER

Federal Insurance Company was first made aware of the situation on Tuesday May 27, 2014 via the brokerage firm Aon Risk Services.

RESERVATION OF RIGHTS

The above information is a summary of the currently available information in support of AFGlobal Corporation's claim due to wire and computer fraud under the existing policy. AFGlobal Corporation is aggressively pursuing all avenues in an effort to mitigate their insured loss. AFGlobal Corporation reserves all rights to submit a supplemental proof of loss with additional information and/or loss amount, including the costs associated with the recovery actions, should subsequent information be developed.

POST-DISCOVERY RECOVERY EFFORTS

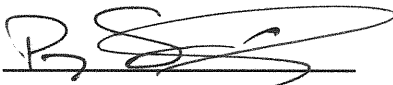
Following the discovery of this matter, AFGlobal Corporation did the following:

- Tuesday May 27, 2014 filed a police report with Houston Police Department
- Tuesday May 27, 2014, notified Bank of America

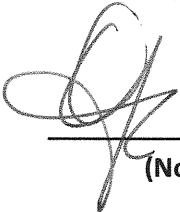
CURRENT STATUS

AFGlobal Corporation has made no representations nor have we taken any action to compromise subrogation rights.

AFGlobal Corporation

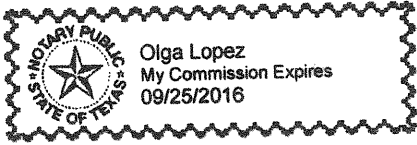
By 
Perry Ewing
Corporate Treasurer

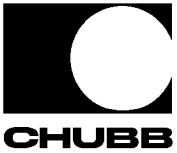
Sworn to before me this 2 day of June, 2014.



(Notary Public)

Expires the 25 day of Aug, 2014





CHUBB GROUP OF INSURANCE COMPANIES

Fifth Avenue Place, 120 Fifth Avenue, Pittsburgh, PA 15222-3008
Phone: (412) 456-8000 Facsimile: (412) 456-8009

July 7, 2014

Via E-Mail

Henry Hanke
Claims Advocate
Financial Services Group
Legal & Claims Practice Group
Aon Risk Services Central, Inc.
200 East Randolph Street, 8th Floor
Chicago, IL 60601

RE: Insured: AF Global Corporation
Policy No.: [REDACTED]
Policy Type: Forefront Portfolio 3.0 Policy/Crime Coverage Part
Claim: Fraudulent Request for Transfer of Funds
Company: Federal Insurance Company
Claim No.: [REDACTED]

Dear Mr. Hanke:

Thank you for the information that has been provided with regard to AF Global Corporation's ("AF Global") loss related to the fraudulent e-mail request for the transfer of funds. Federal has reviewed the information provided and we regret that we must decline coverage for this matter under Forefront Portfolio Policy No. [REDACTED].

According to the information that has been provided, on May 21, 2014, an AF Global's Director of Accounting, Glen Wurm, requested that AF Global's bank send a wire transfer in the amount of \$480,000 to Agriculture Bank of China based on e-mail instructions from a person purporting to be AF Global's Chief Executive Officer, Gean Stalcup. The e-mail instructions received by Mr. Wurm advised that this was a confidential financial operation, which should take priority over other tasks. The e-mail also indicated that Mr. Wurm would receive a call from Steven Shapiro, purportedly an attorney for KPMG. About 30 minutes after receipt of the e-mail, Mr. Wurm received a call and an e-mail, purportedly from Mr. Shapiro, requesting that Mr. Wurm wire \$480,000 to Agriculture Bank of China. Based on the instructions from the person purporting to be Mr. Shapiro, Mr. Wurm had the transfer made by AF Global's bank, Bank of America ("BOA"), pursuant to the instructions received in the e-mail.

On May 27, 2014, the person purporting to be Mr. Shapiro, acknowledged receipt of the funds and asked Mr. Wurm to send an additional \$18 million. Mr. Wurm became suspicious and alerted his immediate supervisor and the officers of the company. After determining that both

EXHIBIT C

Henry Hanke
Claims Advocate
Financial Services Group
Legal & Claims Practice Group
Aon Risk Services Central, Inc.
July 7, 2014
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requests were fraudulent, AF Global attempted, without success, to recall the wire from BOA and reported the matter to the police. As a result, AF Global has sustained a \$480,000 loss. AF Global purchased Forefront Portfolio 3.0 Policy [REDACTED] for the period of October 31, 2013 to October 31, 2014. The Crime Coverage Part of the Policy provides **Forgery Coverage**, **Computer Fraud Coverage** and **Funds Transfer Fraud Coverage** each with a \$3,000,000 limit and a \$100,000 deductible.

In consideration of payment of the premium and subject to the Declarations, General Terms and Conditions, and the limitations, conditions, provisions and other terms of this coverage section, the Company and the Insureds agree as follows:

I. INSURING CLAUSES

Insuring Clause (D): Forgery Coverage

- (D) The Company shall pay the **Parent Organization** for direct loss sustained by an **Insured** resulting from **Forgery** or alteration of a **Financial Instrument** committed by a **Third Party**.

Insuring Clause (E): Computer Fraud Coverage

- (E) The Company shall pay the **Parent Organization** for direct loss of **Money**, **Securities** or **Property** sustained by an **Insured** resulting from **Computer Fraud** committed by a **Third Party**.

Insuring Clause (F): Funds Transfer Fraud Coverage

- (F) The Company shall pay the **Parent Organization** for direct loss of **Money** or **Securities** sustained by an **Insured** resulting from **Funds Transfer Fraud** committed by a **Third Party**.

II. DEFINITIONS

For purposes of this Coverage Part:

Computer Fraud means the unlawful taking of **Money**, **Securities** or **Property** resulting from a **Computer Violation**.

Computer System means a computer or network of computers, including its input, output, processing, storage and communication facilities, and shall include off-line media libraries.

Computer Violation means an unauthorized:

- (A) entry into or deletion of **Data** from a **Computer System**;
- (B) change to **Data** elements or program logic of a **Computer System**, which is kept in machine readable format; or
- (C) introduction of instructions, programmatic or otherwise, which propagate themselves through a **Computer System**,

directed solely against an **Organization**.

Data means information contained in records, manuscripts, accounts, microfilms, tapes or other records, which are processed and stored in a **Computer System**.

Financial Instrument means checks, drafts or similar written promises, orders or directions to pay a sum certain in money, that are made, drawn by or drawn upon an **Organization** or by anyone acting as an **Organization's** agent, or that are purported to have been so made or drawn.

Forgery means the signing of another natural person's name with the intent to deceive, but does not mean a signature that includes, in whole or in part, one's own name, with or without authority, in any capacity for any purpose. Mechanically or electronically produced or reproduced signatures shall be treated the same as handwritten signatures.

Funds Transfer Fraud means fraudulent written, electronic, telegraphic, cable, teletype or telephone instructions (other than **Forgery**), purportedly issued by an **Organization**, and issued to a financial institution directing such institution to transfer, pay or deliver **Money** or **Securities** from any account maintained by such **Organization** at such institution, without such **Organization's** knowledge or consent.

Insuring Clause (D), **Forgery** Coverage requires that any alleged **Forgery** or alteration is covered only if it is on a **Financial Instrument**, as that term is defined. Even if an electronic signature on an e-mail qualifies as a **Forgery**, and we do not agree that it does, there would be no coverage under Insuring Clause (D) because the e-mail is not a **Financial Instrument**. The

Henry Hanke
Claims Advocate
Financial Services Group
Legal & Claims Practice Group
Aon Risk Services Central, Inc.
July 7, 2014
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fraudulent e-mail received by AF Global conferred no rights upon any payee but was simply an e-mail asking AF Global to wire transfer funds to a fraudulent account. It was Mr. Wurm's subsequent wire instructions to BOA that caused a payment to be made. Therefore, we cannot agree that an e-mail qualifies as a **Financial Instrument**, as required by Insuring Agreement (D).

In addition, Insuring Clause (D) requires that the loss result directly from the **Forgery**. Even if there was a **Forgery** in this instance, which we dispute, the alleged **Forgery** on the e-mail did not result in any direct loss to AF Global. If Mr. Wurm had not acted on the e-mail and had not instructed payment to be made by BOA, there would have been no loss. Therefore, AF Global did not sustain a direct loss resulting from a **Forgery** on an e-mail, thus the **Forgery** Coverage does not apply to this claim.

In order for coverage to apply under Insuring Clause (E), **Computer Fraud** Coverage there must be a direct loss of **Money, Securities or Property** sustained by AF Global resulting from **Computer Fraud** committed by a **Third Party**. **Computer Fraud** is defined as the unlawful taking of **Money, Securities or Property** resulting from a **Computer Violation**. There is no coverage for AF Global's claim under **Computer Fraud** Coverage because there was no **Computer Violation**, as defined above. Even though Mr. Wurm received fraudulent instructions via e-mail to initiate the wire transfer, it was Mr. Wurm who requested that the funds be transferred via wire by BOA. Therefore, there was no unauthorized entry into, deletion of, change to **Data** or **Data** elements of a **Computer System** and no unauthorized introduction of instructions through a **Computer System**.

According to the definition of **Computer Violation**, the unauthorized instructions must propagate themselves through a **Computer System**. An example of this would be a computer virus which takes over a computer. The e-mail instructions received by Mr. Wurm did not propagate themselves through a **Computer System**. The e-mails entered into an e-mail in-box and that is where they stayed. Secondly, the introduction of instructions must be unauthorized. In this case, the instructions were sent via e-mail to an in-box which was open to receive e-mails from anyone. While the sender of the e-mail was acting fraudulently, it cannot be said that the sender was not authorized to introduce e-mails into Mr. Wurm's e-mail in-box.

The loss in this claim was caused by the transfer of funds pursuant to Mr. Wurm's instructions to BOA. No **Third Party** used a computer to take the funds. The definition of **Computer Fraud** requires a taking of **Money** resulting from a **Computer Violation**. The e-mail was not a taking of **Money**. If Mr. Wurm had not issued instructions to BOA, there would have been no loss despite the e-mail. A loss of this nature is not a **Computer Fraud** simply because Mr. Wurm acted in reliance on a fraudulent e-mail. An e-mail is simply a means for communicating information; it is not a means of transferring **Money**.

Henry Hanke
Claims Advocate
Financial Services Group
Legal & Claims Practice Group
Aon Risk Services Central, Inc.
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Finally, there is no coverage for the loss under **Funds Transfer Fraud** Coverage Insuring Clause F, because the fraudulent written instructions were not purportedly issued by BOA. In this case, the fraudulent e-mail was sent to Mr. Wurm directing him to issue a wire transfer to a fraudulent account. Mr. Wurm, with knowledge and consent, then instructed BOA to issue the wire transfer to the fraudulent account.

For the reasons outlined above, Federal declines coverage for the claim submitted by AF Global under the Policy for the period of October 31, 2013 to October 31, 2014.

Federal's position is based on the information received to date and is subject to further evaluation if additional information is provided by the Insured. Federal expressly reserves all rights as provided under the Policy and at law, and neither this letter nor any subsequent investigation or inquiry is to be deemed an admission of liability or a waiver of any such rights.

Should you have any questions or concerns regarding this matter, please feel free to contact me at 412-456-8011 or at brobbibaro@chubb.com.

Very truly yours,
Chubb & Son
A division of Federal Insurance Company



Bruce Robbbaro
Sr. Fidelity Claims Examiner
Direct Dial: (412) 456-8011
Fax: (412) 456-8009
E-mail: brobbibaro@chubb.com



CHUBB GROUP OF INSURANCE COMPANIES

Simsbury Claim Service Center
82 Hopmeadow Street
Simsbury, CT 06070-7683
Facsimile: 855-842-1349

October 9, 2014

Via E-Mail

William M. Shea
Vice President
Financial Services Group
Legal & Claims Practice Group
Aon Risk Services Central, Inc.
200 East Randolph Street, 8th Floor
Chicago, IL 60601

RE: Insured: AF Global Corporation (“AF Global”)
Policy No.: [REDACTED] (the “Policy”)
Insurer: Federal Insurance Company (“Federal”)
Policy Type: Forefront Portfolio 3.0 Policy/Crime Coverage Part
Matter: Fraudulent Request for Transfer of Funds
Ref. No.: [REDACTED]

Dear Mr. Shea:

Reference is made to your letter dated August 12, 2014, sent in response to my letter of July 7, 2014. Federal has carefully considered the issues raised in your letter and reaffirms its position that AF Global’s loss is not covered by the Crime Coverage Section of the Policy issued to AF Global for the reasons previously advised.

Federal disagrees with your contention that Insuring Clause (D): Forgery Coverage is implicated by this matter. Your August 12 letter asserts that “[t]he Forgery by a Third Party in this incident was of a Financial Instrument.” Federal is unaware of any authority to support your position that the e-mail you reference qualifies as a **Financial Instrument** (as that term is defined in the Policy). To be a **Financial Instrument**, the subject e-mail must be a check, draft, or a similar written promise, order or direction to pay a sum certain in money that is made, drawn by or drawn upon an **Organization** or by anyone acting as an **Organization’s** agent, or that is purported to have been so made or drawn. Your August 12 letter appears to argue that “[t]he email constituted an order or direction to pay” because Mr. Shapiro’s May 21, 2014 e-mail contained wire transfer instructions as to where the funds (apparently discussed in a separate phone conversation between “Mr. Shapiro” and Mr. Wurm) were to be sent. This argument

EXHIBIT D

William M. Shea
Vice President
Financial Services Group
Legal & Claims Practice Group
Aon Risk Services Central, Inc.
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ignores the fact that what defines a **Financial Instrument** under the Policy is not merely the existence of a written promise, order or direction to pay, but a written promise, order or direction to pay that is “similar” to a “check” or “draft”. In the context of a commercial crime policy, “checks” and “drafts” are widely understood to be types of negotiable instruments. They represent unconditional written orders or promises to pay a fixed amount of money on demand, or at a definite time, to a payee or bearer, and they can be transferred outside of the maker or drawer’s control. The e-mail at issue in this matter -- which is not negotiable -- is in no way similar to these types of instruments. By way of example, Federal’s counsel suggested that we refer you to *Vons Companies, Inc. v. Fed. Ins. Co.*, 57 F. Supp. 2d 933, 945 (C.D. Cal. 1998) *aff’d*, 212 F.3d 489 (9th Cir. 2000), particularly at page 945, wherein the Court stated that “coverage requires forgery of certain types of documents. It is not the same to say that the investors’ reliance on the legitimacy of the invoices, purchase orders, and wire information is interchangeable with the forgery of a negotiable instrument or its equivalent. [T]he rationale behind making forgery a crime is the need of business to rely on negotiable instruments. [] As a result, the documents have traditionally been those with legal effect, documents that can be ‘deposited.’ The invoices and other documents here, are not of that type. There can be no doubt, moreover, that the policy unequivocally contemplates documents of the same type and effect as checks and drafts.”¹

Federal also disagrees with your argument that Insuring Clause (E): Computer Fraud Coverage is implicated by this matter. Your August 12 letter asserts that the subject e-mail to Mr. Wurm constitutes “an unauthorized introduction of instructions, programmatic or *otherwise*, which propagate themselves through a **Computer System**.” Federal is not aware of any relevant authority to support the position that receipt of the subject e-mail constitutes an “unauthorized introduction of instructions...which propagate themselves through a **Computer System**.” Federal’s counsel has advised that the June 24, 2011 *Owens Schine* Memorandum of Decision referenced in your letter has no bearing on the present matter. Counsel has indicated that apart from the fact that *Owens Schine* addressed a materially different definition of “Computer Fraud” in an unpublished decision under Connecticut law, your August 12 correspondence also fails to identify that a subsequent Order was issued on or about April 18, 2012 (and entered on the *Owens Schine* docket on or about April 27, 2012) indicating that, among other things, the June 24, 2011 Memorandum of Decision upon which you rely was vacated.

Federal’s counsel further advises that Federal’s position that the term “unauthorized” in the definition of **Computer Violation** requires a hacking event -- in which someone obtains unauthorized access or entry to a computer -- is supported by a number of recent instructive decisions. In particular, Federal’s counsel suggested we refer you to the following cases: *Universal Am. Corp. v. Nat’l Union Fire Ins. Co. of Pittsburgh, PA*, 38 Misc. 3d 859 (N.Y. Sup.

¹ In any event, Federal does not concede that the subject e-mail contains a **Forgery** as that term is defined by the Policy.

William M. Shea
Vice President
Financial Services Group
Legal & Claims Practice Group
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Ct. 2013), *aff'd*, 110 A.D.3d 434 (1st Dep't, 2013)(which, counsel advises us, at page 434 states that the "plain meaning of defendant's computer systems fraud rider, covering loss from a fraudulent 'entry of electronic data' or 'change of electronic data' within the insured's proprietary computer system, was intended to apply to wrongful acts in manipulation of the computer system, i.e., by hackers, and did not provide coverage for fraudulent content..."), *leave to appeal granted*, 23 N.Y. 3d 904 (2014); *Pestmaster Servs., Inc. v. Travelers Cas. & Sur. Co. of Am.*, 2:13 cv-5039 (JFW MRWX), 2014 WL 3844627 (C.D. Cal. July 17, 2014)(which, counsel advises us, at page *7 indicates that the conduct at issue "does not constitute 'Computer Fraud' as defined by the Policy because the transfer of funds was at all times authorized and did not involve hacking or any unauthorized entry into a computer system"); and *Brightpoint, Inc. v. Zurich Am. Ins. Co.*, 2006 WL 693377 (S.D. Ind. 2006)(which, counsel advises us, at page *7 rejects the insured's argument that "all that is required in terms of [computer fraud] coverage is the use of a computer followed by a theft that is some way connected to the use of the computer").

Federal also maintains that the subject e-mail is not reasonably characterized as "an unauthorized introduction of instructions" -- to the extent that the purported "instructions" were "introduced" via a publicly accessible e-mail in-box. Further, there is no evidence that even suggests that the claimed "instructions" were capable of spreading on their own (i.e., they cannot "propagate themselves"). To the contrary, the facts indicate that the Insured's loss was caused by a social engineering ploy (as to which computer use was, at most, incidental), not "Computer Fraud", as that term is defined in the Policy.

Federal also disagrees with your contention that Insuring Clause (F): Funds Transfer Fraud Coverage is implicated by this matter. In order for the **Funds Transfer Fraud** Coverage to apply, fraudulent instructions to the bank must purport to have been issued by the Insured, but without the Insured's knowledge or consent. In this case, AF Global's proof of loss confirms that the instructions to the bank were in fact issued by AF Global -- not another party purporting to be AF Global -- and the instructions were issued with AF Global's knowledge and consent.

Finally, Federal respectfully disagrees with your conclusory assertion that any of the undefined terms in the Policy are ambiguous.

For the reasons outlined above and in our prior letter dated July 7, 2014, Federal maintains its declination of coverage for the claim submitted by AF Global under the Policy for the period October 31, 2013 to October 31, 2014.

Federal's position is based on the information received to date and is subject to further evaluation if additional information is provided by the Insured. Federal expressly reserves all

William M. Shea
Vice President
Financial Services Group
Legal & Claims Practice Group
Aon Risk Services Central, Inc.
October 9, 2014
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rights as provided under the Policy and at law, and neither this letter nor any subsequent investigation or inquiry is to be deemed an admission of liability or a waiver of any such rights.

Should you have any questions or concerns regarding this matter, please feel free to contact me at 412-456-8011 or at brobbibaro@chubb.com.

Very truly yours,
Chubb & Son
A division of Federal Insurance Company



Bruce Robbbaro
Sr. Fidelity Claims Examiner
Direct Dial: (412) 456-8011
Fax: (855) 842-1349
E-mail: brobbibaro@chubb.com

cc: Henry Hanke
Claims Advocate
Financial Services Group
Legal & Claims Practice Group
Aon Risk Services Central, Inc.
200 East Randolph Street, 8th Floor
Chicago, IL 60601