

Dear Stewart Partners,

The Autumn equinox is tomorrow night at 9:04 PM, and with it brings the official start of Fall. While we will miss summer, Fall maybe one of the best seasons in New England. To inspire everyone to get out and enjoy this beautiful place that we live in, we've included some ideas at the end of the update to get you outside and enjoy the beginning of fall.

In this week's update we are highlighting a case interpreting a settlement agent's cyber protection policy we found interesting and noteworthy. Although the case was decided in the 11th Circuit Court of Appeals, it is one of the few cases we know of interpreting language in a policy relative to wire fraud risk. Take time to review your own policies and speak with your insurance agents to make sure you understand what your insurance policy covers.

Also, as we are talking about wire-fraud, we are again including in this week's update information about a new offering by CertifiD called PayoffProtect. Read more about the new service below and speak to your Stewart account representative if you want more information.



Star Title Partners of Palm Harbor, LLC v. Illinois Union Ins. Co., 2022 U.S. App. LEXIS 24930 *; 2022 WL 4075048

The facts of this case are straight forward. Star Title Partners of Palm Harbor, LLC was hired as the closing and settlement agent for a residential sale transaction. The title disclosed that the property was encumbered by a mortgage, which the seller confirmed. The seller provided to the settlement agent's employee the telephone number of Capital Mortgage, the mortgage company who held the mortgage, so that a payoff could be obtained. The settlement agent contacted the lender by phone for a payoff and was directed to request a payoff by emailing payoffs@capitalmor.com, which the settlement agent's employee did.

The employee received an email from an individual purporting to be an employee of Capital Mortgage, which email contained a payoff statement with wire instructions. The settlement agent's employee did not suspect the email was fraudulent. The employee did review the payoff statement to confirm that it came from the correct lender, contained the correct loan number and borrower name, and that the payoff amount was consistent with what the seller had represented was due. Additionally, the settlement agent received the same payoff statement via fax, purportedly sent by Capital Mortgage. This payoff statement was reviewed and it matched what had been provided by email. Although the employee acknowledged she was well aware of wire fraud in the real estate settlement industry, she testified that she saw no red flags or suspicious circumstances with this payoff and had she identified any red flags she would have taken additional steps to verify the payoff. Notably, the settlement agent did not have a policy in place requiring verification of all wiring and payoff instructions through an independent contact number.

The closing occurred and the payoff funds were sent in accordance with the payoff statement; however, the instructions were indeed fraudulent, and the mortgage holder never received any payoff funds.

The settlement agent submitted the claim to Illinois Union Insurance, LLC under its Cybercrime Endorsement to its liability policy. The endorsement included the following Deceptive Transfer Fraud Insuring Clause:

We will pay for Your loss of Funds resulting directly from Your having transferred, paid or delivered any Funds from Your Account as the direct result of an intentional misleading of Your employee, through a misrepresentation of a material fact (“Deceptive Transfer”) which is:

1. Relied upon by an employee, and
2. Sent via a telephone call, email, text, . . .
3. Sent by a person purporting to be an employee, customer, client or vendor; and,
4. The authenticity of such transfer request is verified in accordance with Your internal procedures.

The insurer denied coverage because the payoff letter was not “sent by a person purporting to be an employee, customer, client or vendor.” Litigation ensued over whether the denial was appropriate. The lower court agreed with the insurer that coverage was appropriately denied and granted the insurer’s motion for summary judgment. The settlement agent appealed. The appeals court affirmed the lower court’s ruling. The Court explained that coverage required that all four elements be met, as set forth in the coverage clause, and that because the mortgage holder was not an employee, customer, client or vendor, the reliance on the fraudulent payoff did not fall within the endorsement’s coverage. The settlement agent argued that the clause should be “understood” to include “persons and entities involved in the real estate transaction.” The court disagreed, and stated that the clause must be interpreted as written and it was prohibited from altering the terms bargained by parties to a contract.

The case is an important reminder that agents should review their cybercrime and wire fraud policy coverages carefully, both at the time of purchase and at the time of renewal. In addition, it is important that all staff involved in disbursing funds follow established procedures, as many policies contain requirements that coverage for loss is limited to circumstances where internal procedures have been followed.



PayoffProtect by CertifID

CertifID has added a new tool in its suite of wire fraud protection services called PayoffProtect. With PayoffProtect, CertifID validates mortgage payoff instructions received from various parties in the transaction. With PayoffProtect you no longer need to call lenders to confirm the authenticity of the instructions you’ve received. PayoffProtect confirms the instructions for you in a streamlined and automated way.

To see how it works check out this video: <https://www.youtube.com/watch?v=LzN0uKyMUGw>

CertifID is offering Stewart Agents special pricing for this new product. Talk with your Account Service Representative for more information.



Enjoying Fall in New England – Check Out These Ideas

Drive the Vermont Cheese Trail: Did you know that Vermont has its very own “Cheese Trail?” The Vermont Cheese Council has put together a circuit of the state’s top cheesemakers, allowing you to take in the beautiful Vermont scenery (not to mention foliage) and stop to taste some of the best cheese produced by local farmers. The drive has stops as close as the Massachusetts border and as far north as the Canadian border. Check out this interactive map: <https://vtcheese.com/vermont-cheese-trail-map/>

Fall is Cranberry Season in Massachusetts – Check out the Cape Cod Cranberry Growers’ Association’s Cranberry Tours:

Did you know that A.D. Makepeace Company, based in Wareham, Massachusetts, is the world’s largest cranberry grower, and the largest private property owner in eastern Massachusetts? A.D. Makepeace Company has partnered with the Cape Cod Cranberry Growers’ Association to provide tours to the public during harvest season. If you’ve never seen how cranberries are harvested, it is something you need to check out. For information on tours, follow this link:

<https://www.cranberries.org/cranberry-bog-bus-tours>

200 5th Avenue, Suite 301, Waltham, MA 02451

Phone: 800-628-2988 **Fax:** 781-697-3336

Tiziano Doto, MA & RI Agency Services Manager - tiziano.doto@stewart.com

Jutta R. Deeney, VP, New England Regional Underwriting Counsel - jutta.deeney@stewart.com

Christine Provost, MA Associate Senior Underwriting Counsel - christine.provost@stewart.com

Tracie Kester, MA Underwriting Counsel - tracie.kester@stewart.com

Paula M. Cuculo, RI Underwriting Counsel - paula.cuculo@stewart.com

Eileen O’Shaughnessy, RI Underwriting Counsel – eileen.oshaughnessy@stewart.com

General MA Underwriting Mailbox - massuwing@stewart.com

Tracy Hawkins, MA Agency Sales Representative Sr. - tracy.hawkins@stewart.com

Mary Blomerth, MA Agency Sales Representative Sr. - mary.blomerth@stewart.com

Laurie Goodwin, MA Agency Sales Representative - laurie.goodwin@stewart.com

Lyslie A. DeMeo, RI Agency Sales Representative Sr. - ldemeo@stewart.com

Michelle Radie-Coffin, NH Underwriting Counsel and State Manager - michelle.radicoffin@stewart.com