

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

RealPage, Inc.,	§	
Plaintiff,	§	
	§	
v.	§	Civil Action No.: _____
	§	
National Union Fire Insurance Company of Pittsburgh, Pa. and Beazley Insurance Company, Inc.	§	
Defendants.	§	
	§	

COMPLAINT

Plaintiff RealPage, Inc. (“RealPage”) files this Complaint against Defendants National Union Fire Insurance Company of Pittsburgh, Pa. (“AIG”) and Beazley Insurance Company, Inc. (“Beazley” and, together with AIG, the “Insurers”).

NATURE OF THE CASE

1. This is an insurance coverage dispute arising out of the Insurers’ failure to honor their obligations in Commercial Crime Policies for which RealPage paid substantial premiums.
2. RealPage provides software and data analytics to the real estate industry. It also provides back office management services for owners and managers of various property types that assist those clients with property management, resident services and revenue management. One of the services RealPage provides for residents and owners of residential properties is the collection, management and transfer of rent payments and other funds.
3. RealPage purchased a primary Commercial Crime Policy from AIG and an Excess Fidelity and Crime Policy from Beazley (collectively, the “Policies”) to provide coverage for

losses arising out of various financial crimes, including computer fraud and other fraudulent transfers of funds.

4. The Named Insured under the Policies is RealPage and its subsidiary companies, which includes a subsidiary entity that was acquired by RealPage in 2017 and which, among other things, provides payment processing services to a subset of its clients (the “Subsidiary”). Unless otherwise indicated, references in this Complaint to “RealPage” means RealPage, the Subsidiary, or both of them.

5. As a direct result of a targeted email phishing incident, one or more unknown bad actors fraudulently diverted more than \$6 million in unrecovered funds that RealPage collected, controlled and managed for its clients (the “Fraud Incident”).

6. Despite acknowledging that the Fraud Incident triggered coverage under the Commercial Crime Policy, AIG wrongfully refused to accept coverage for the vast majority of RealPage’s losses.

7. RealPage’s losses exceed the Commercial Crime Policy’s limit of liability, so they also trigger coverage under the Excess Fidelity and Crime Policy.

8. RealPage seeks declarations that its losses resulting from the Fraud Incident are covered under the Commercial Crime Policy and the Excess Fidelity and Crime Policy. RealPage also seeks (i) damages for breach of contract due to AIG’s failure to reimburse RealPage for losses under the Commercial Crime Policy, (ii) damages for Beazley’s anticipatory breach of contract to reimburse RealPage for losses under the Excess Fidelity and Crime Policy, (iii) damages for AIG’s violations of the Texas Insurance Code, and (iv) attorneys’ fees.

THE PARTIES

9. Plaintiff RealPage, Inc. is a corporation formed under Delaware law with its principal place of business in Richardson, Texas.

10. On information and belief, Defendant National Union Fire Insurance Company of Pittsburgh, Pa. is an insurance company formed under Pennsylvania law with its principal place of business in Pennsylvania, and it conducts business in the State of Texas. National Union Fire Insurance Company of Pittsburgh, Pa.'s registered agent is Corporation Service Company, 211 East 7th Street, Suite 620, Austin, Texas 78701-3218.

11. On information and belief, Defendant Beazley Insurance Company, Inc. is an insurance company formed under Connecticut law with its principal place of business in Connecticut, and it conducts business in the State of Texas. Beazley's registered agent is Corporation Service Company, 211 East 7th Street, Suite 620, Austin, Texas 78701-3218.

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1332(a)(1) because there is complete diversity of citizenship between the parties and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

13. This Court has personal jurisdiction over the Defendants because each Defendant is authorized to sell or write insurance in Texas and, at all material times, has conducted substantial insurance business in the State of Texas, including engaging in the business of selling insurance that covers policyholders and activities located in Texas.

14. Venue is proper in this Court under 28 U.S.C. § 1391 because the Defendants are subject to personal jurisdiction in this District and a substantial part of the events or omissions giving rise to the claims occurred in this District.

15. This Court has the power to declare the parties' rights under 28 U.S.C. § 2201.

FACTUAL BACKGROUND

A. The Insurance Policies

16. AIG sold RealPage a Commercial Crime Policy, No. 01-317-15-74, for the policy period of March 31, 2018 to March 31, 2019 (the "Primary Crime Policy").¹

17. The Primary Crime Policy provides a number of Insuring Agreements, including "Computer Fraud" and "Funds Transfer Fraud," with a \$5 million Limit of Insurance Per Occurrence and a \$50,000 deductible.

18. The "Computer Fraud" Insuring Agreement provides as follows:

6. Computer Fraud

We will pay for loss of or damage to "money", "securities" and "other property" resulting directly from the use of any computer to fraudulently cause a transfer of that property from inside the "premises" or "banking premises":

- a.** To a person (other than a "messenger") outside those "premises"; or
- b.** To a place outside those "premises".

Primary Crime Policy, § A(6).²

19. The Primary Crime Policy defines "money" to include "[c]urrency, coins and bank notes in current use and having a face value," while "other property" includes any other tangible property "that has an intrinsic value." Primary Crime Policy, §§ F(13), (15).

¹ A copy of the Primary Crime Policy is attached as Exhibit A.

² Terms in **bold** reflect the way they appear in the excerpts quoted from the Policies. Terms in quotation marks are further defined in the Policies.

20. “Banking premises” is defined as “the interior of that portion of any building occupied by a banking institution or similar safe depository.” Primary Crime Policy, § F(1).

21. The “Funds Transfer Fraud” Insuring Agreement provides as follows:

7. Funds Transfer Fraud

We will pay for loss of “funds” resulting directly from a “fraudulent instruction” directing a financial institution to transfer, pay or deliver “funds” from your “transfer account”.

Primary Crime Policy, § A(7).

22. “Funds” includes “money” as that term is defined in the Primary Crime Policy.
Primary Crime Policy, § F(9).

23. The Primary Crime Policy also broadly defines “Fraudulent instruction” as follows:

8. “Fraudulent instruction” means:

- a.** An electronic, telegraphic, cable, teletype, telefacsimile or telephone instruction which purports to have been transmitted by you, but which was in fact fraudulently transmitted by someone else without your knowledge or consent;
- b.** A written instruction (other than those described in Insuring Agreement A.2.) issued by you, which was forged or altered by someone other than you without your knowledge or consent, or which purports to have been issued by you, but was in fact fraudulently issued without your knowledge or consent; or
- c.** An electronic, telegraphic, cable, teletype, telefacsimile, telephone or written instruction initially received by you which purports to have been transmitted by an “employee” but which was in fact fraudulently transmitted by someone else without your or the “employee’s” knowledge or consent.

Primary Crime Policy, § F(8).

24. The Primary Crime Policy covers loss to both property that RealPage “own[s]” and property that RealPage “hold[s] for others whether or not [RealPage is] legally liable for the loss

of such property.” Primary Crime Policy, § E(1)(p). Those phrases are not defined, so they must be interpreted using their common and ordinary meanings.

25. Beazley sold RealPage an Excess Fidelity and Crime Policy, No. V227E9180101, for the policy period of March 31, 2018 to March 31, 2019 (the “Excess Crime Policy”).³

26. The Excess Crime Policy provides up to \$5 million in coverage above the Primary Crime Policy’s limit “for any loss which triggers coverage under the [Primary Crime Policy].” Excess Crime Policy, § I.

B. The Fraud Incident

27. RealPage acquired the Subsidiary in 2017. One of the services that RealPage provides to a limited subset of the Subsidiary’s clients is the collection of rental and other payments from residents and the transfer of those payments to clients. RealPage’s Subsidiary provides a web portal that residents at certain of the Subsidiary’s client properties can access to make their payments. The residents pay the money through the web portal to an account at which point further transfer of funds is controlled entirely by RealPage. The residents agree to deliver the funds to the Subsidiary (via the web portal) for the purpose of transferring the payments to the clients, and the Subsidiary’s clients agree to use the Subsidiary for the purpose of collecting and processing such payments, ultimately to be delivered to the clients. RealPage accomplishes the intent of both the residents and the clients by taking sole control over the payments throughout the process as they travel from the residents to the clients.

28. For the portion of the Subsidiary’s services relevant here, the RealPage Subsidiary uses a third-party software application as a tool to allocate and direct the resident payments received through the Subsidiary’s web portal. The application directs the payments to a bank

³ A copy of the Excess Crime Policy is attached as Exhibit B.

clearing account, and then transfers those funds to the appropriate client's bank account, all in accordance with instructions given to the application by the Subsidiary. Transactional fees owed to RealPage for these services are also directed to RealPage's bank account in accordance with instructions given to the application by the Subsidiary, either directly through manual input into the application or through an application programming interface ("API") created and owned by the Subsidiary. RealPage controls and directs all transfers of funds through the use of the third-party software application, which is a mere conduit.

29. RealPage manages and controls the clients' entire payment process for this portion of the Subsidiary's business through its complete and sole control of the Subsidiary's web portal, the API used to transmit rental payment information, and the configuration of client bank account information within the third-party software application. Neither clients nor their renters who make rental payments through the Subsidiary's web portal have any relationship with the third-party software application or the application's provider, any ability to affect how the portal processes rental payment information, or any ability to dictate what application the Subsidiary uses, if any, for a funds processing mechanism. They never see or communicate with the third-party software application, they cannot log into that application, and they cannot change the disbursement instructions within that application. RealPage alone controls the payments that it holds for clients throughout the process of receiving such funds through the Subsidiary's portal, to the clearing account, and then to the clients' bank accounts.

30. In May 2018, one or more unauthorized parties (the "Perpetrator(s)") used a targeted phishing scheme to obtain and to alter the account credentials of a RealPage employee. The Perpetrator(s) used those credentials to access the third-party software application to change certain bank account disbursement instructions provided by the Subsidiary to the application. By

changing those instructions, the Perpetrator(s) diverted more than \$10 million that had been collected by RealPage through the Subsidiary's web portal before the funds were disbursed to several clients.

31. Despite RealPage's loss as a result of the Fraud Incident, RealPage credited each of the affected Subsidiary clients' accounts with the full amount of the stolen funds promptly after detection of the fraudulent transfer. While some of the funds were ultimately recovered, RealPage lost more than \$6 million that was never recovered.

C. RealPage's Coverage Claim

32. The Primary Crime Policy and Excess Crime Policy were both in effect at all relevant times.

33. RealPage gave notice of the Fraud Incident under the Policies.

34. RealPage provided extensive information to AIG as requested, orally and in writing, and submitted a formal proof of loss in September 2018.

35. In response, AIG wrongly denied coverage and put its own interests above those of RealPage, all in breach of its duties to RealPage.

36. On January 4, 2019, AIG sent a letter admitting that the Fraud Incident triggered coverage under the Primary Crime Policy's Computer Fraud insuring agreement.

37. However, AIG accepted coverage only for a limited portion of RealPage's losses consisting of diverted funds that it calculated as representing transactional fees owed to RealPage by its clients.

38. AIG wrongfully asserted that the Primary Crime Policy does not cover the majority of RealPage's losses consisting of diverted funds that would have been sent to client bank accounts,

claiming that RealPage did not “own” the funds or “hold the funds for others.” AIG denied coverage for these amounts.

39. RealPage provided AIG with clear and undisputed information concerning the Subsidiary web portal, the third-party software application, and payment of the funds at issue, all of which demonstrate that RealPage was holding those funds for clients in accordance with its agreements with residents and clients when the funds were diverted, which information demonstrated RealPage’s right to coverage. However, AIG ignored and mischaracterized this information and wrongfully denied coverage that rightfully exists under the Primary Crime Policy (and the Excess Crime Policy).

40. Notwithstanding AIG’s wrongful position, RealPage continued to work with AIG, including by providing additional information and explanation at AIG’s request and offering to further discuss the claim with AIG.

41. However, AIG reiterated its erroneous coverage position and continues to refuse to provide substantial benefits under the Primary Crime Policy.

42. Even though RealPage’s losses exceed the Primary Crime Policy’s limit, Beazley has also provided no benefits under the Excess Crime Policy in connection with the Fraud Incident.

43. RealPage has complied with all of the Policies’ provisions to the extent required by law and has repeatedly stated its disagreement with AIG’s positions.

44. The Insurers’ refusal to pay is wrongful and constitutes a breach of the Policies.

CAUSES OF ACTION

A. Declaratory Relief (Against AIG)

45. RealPage repeats and re-alleges the allegations set forth in Paragraphs 1 through 44.

46. AIG agreed to indemnify RealPage for losses incurred as a result of Computer Fraud or Funds Transfer Fraud as provided under the Primary Crime Policy.

47. RealPage suffered covered losses under the Primary Crime Policy in connection with the Fraud Incident.

48. RealPage complied with all terms, conditions and prerequisites to coverage under the Primary Crime Policy to the extent required by law.

49. AIG improperly refused to reimburse RealPage for the majority of its losses.

50. An actual and justifiable controversy exists between RealPage and AIG concerning their respective rights and obligations under the Primary Crime Policy, including AIG's obligation and refusal to provide coverage to RealPage for its losses in connection with the Fraud Incident.

51. The controversy is ripe and of sufficient immediacy to justify the issuance of a declaratory judgment. The issuance of declaratory relief and subsequent compliance by AIG should be sufficient to resolve the existing controversy between RealPage and AIG in this cause of action.

52. Pursuant to 28 U.S.C. § 2201 and Federal Rule of Civil Procedure 57, RealPage seeks a declaratory judgment that the Primary Crime Policy covers RealPage's losses in connection with the Fraud Incident.

B. Declaratory Relief (Against Beazley)

53. RealPage repeats and re-alleges the allegations set forth in Paragraphs 1 through 52.

54. Beazley agreed to indemnify RealPage for losses in excess of the Primary Crime Policy, as provided under the Excess Crime Policy.

55. RealPage suffered covered losses under the Excess Crime Policy in connection with the Fraud Incident.

56. RealPage complied with all terms, conditions and prerequisites to coverage under the Excess Crime Policy to the extent required by law.

57. Beazley improperly refused to provide coverage to RealPage.

58. An actual and justifiable controversy exists between RealPage and Beazley concerning their respective rights and obligations under the Excess Crime Policy, including Beazley's obligation and refusal to provide coverage to RealPage for its losses in connection with the Fraud Incident.

59. The controversy is ripe and of sufficient immediacy to justify the issuance of a declaratory judgment. The issuance of declaratory relief and subsequent compliance by Beazley should be sufficient to resolve the existing controversy between RealPage and Beazley in this cause of action.

60. Pursuant to 28 U.S.C. § 2201 and Federal Rule of Civil Procedure 57, RealPage seeks a declaratory judgment that the Excess Crime Policy covers RealPage's losses in connection with the Fraud Incident.

C. Breach of Contract (Against AIG)

61. RealPage repeats and re-alleges the allegations set forth in Paragraphs 1 to 60.

62. The Primary Crime Policy is a valid and enforceable contract between RealPage and AIG.

63. AIG was and is required to indemnify RealPage for losses resulting from the Fraud Incident under the terms of the Primary Crime Policy.

64. RealPage complied with all terms, conditions and prerequisites to coverage under the Primary Crime Policy to the extent required by law, or was excused from doing so.

65. AIG wrongfully denied coverage to RealPage for losses resulting from the Fraud Incident in breach of the Primary Crime Policy.

66. RealPage has incurred significant losses in connection with the Fraud Incident and its claim, including the diverted funds.

67. As a direct and proximate result of AIG's breach of the Primary Crime Policy, RealPage has suffered and will continue to suffer monetary damages in an amount to be determined at trial.

D. Anticipatory Breach of Contract (Against Beazley)

68. RealPage repeats and re-alleges the allegations set forth in Paragraphs 1 through 67.

69. The Excess Crime Policy is a valid and enforceable contract between RealPage and AIG.

70. The Excess Crime Policy "follows form" to the Primary Crime Policy, stating that it provides coverage "for any loss which triggers coverage under the [Primary Crime Policy]."

71. RealPage complied with all terms, conditions and prerequisites to coverage under the Primary Crime Policy to the extent required by law, or was excused from doing so.

72. Beazley had not accepted coverage for this claim under the Excess Crime Policy and, on information and belief, has adopted or will adopt AIG's positions.

73. RealPage has incurred significant losses in connection with the Fraud Incident and its claim, including the diverted funds, in excess of the limit of the Primary Crime Policy.

74. As a direct and proximate result of Beazley's anticipatory breach of the Excess Crime Policy, RealPage has suffered and will suffer monetary damages in an amount to be determined at trial.

E. Violation of Texas Insurance Code Chapter 541 (Against AIG)

75. RealPage repeats and re-alleges the allegations set forth in Paragraphs 1 through 74.

76. AIG violated Texas Insurance Code Chapter 541 by engaging in prohibited unfair insurance practices with respect to RealPage's claim, including by failing to attempt in good faith to effectuate a prompt, fair and equitable settlement of the claim once liability had become reasonably clear.

77. As a result of AIG's unfair insurance practices, RealPage has suffered and will continue to suffer monetary damages, including court costs and attorneys' fees in this coverage action, in an amount to be determined at trial.

78. AIG is also liable to RealPage for up to three times the actual damages sustained by RealPage for AIG's knowing commission of these unfair insurance practices.

F. Violation of Texas Insurance Code Chapter 542 (Against AIG)

79. RealPage repeats and re-alleges the allegations set forth in Paragraphs 1 through 78.

80. AIG violated Texas Insurance Code Chapter 542 by failing to comply with the deadlines imposed by that chapter, including by failing to pay RealPage's losses within the time required under Texas Insurance Code § 542.056 and § 542.058(a) after receiving all the information reasonably requested and required.

81. As a result of its violations of the Texas Insurance Code Chapter 542, AIG is liable to pay to RealPage 18% interest per year (per violation) on the amount of its claim as damages, in an amount to be determined at trial.

82. AIG is also liable to RealPage for attorneys' fees for this coverage action, in an amount to be determined at trial.

JURY DEMAND

RealPage requests a trial by jury for all issues so triable.

RELIEF SOUGHT

RealPage respectfully requests judgment in its favor as follows:

- a. For declaratory judgment that RealPage suffered covered losses that AIG is obligated to pay under the Primary Crime Policy;
- b. For declaratory judgment that RealPage suffered covered losses that Beazley is obligated to pay under the Excess Crime Policy;
- c. For all actual damages arising from AIG's breach of contract, in amounts to be shown at trial;
- d. For all damages recoverable under the Texas Insurance Code;
- e. For attorneys' fees, costs and disbursements of this action; and
- f. For such other and further relief as the Court deems just and proper.

Dated: June 5, 2019

Respectfully submitted,

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