



Client Bulletin

Volume XL, No. 5

May 31, 2023

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Dennis Pergram to Receive OAESA's D. Richard Murray Service Award

Please join us in congratulating Denny on being named the recipient of the Ohio Association of Elementary School Administrator's ("OAESA") D. Richard Murray Service Award for 2023. This award is given annually to an individual who has provided exemplary service to OAESA members and the OAESA, as determined by the Board of Directors of OAESA. Denny will be presented with the award at a luncheon to be held on Friday, June 16.

OAESA is an association that provides support to K - 8 administrators throughout their careers. Denny has served as counsel for OAESA and its members since 2009.

Congratulations, Denny, on this well-deserved award!

Read Your Business Insurance Coverage Provisions Closely-Ransomware Attack

Although commercial insurance policies/business owners policies vary from insurance company to insurance company, generally the policies are reasonably similar in the coverage provided and frequently use similar language in describing what is covered and what is excluded. A recent decision by the Ohio Supreme Court, *EMOI Services, LLC v. Owners Ins. Co.*, 170 Ohio St.3d 78, shows that the language in an insurance policy needs to be read closely and an insured cannot rely on the shorthand phrase for the policy's coverage.

EMOI is a computer-software company that uses software it developed and purchased third-party software to provide medical offices with service and support for scheduling appointments, recordkeeping and billing. EMOI was the target of a ransomware attack that illegally gained access to its computer systems ("hacked"), encrypted files needed for using its software and database systems, and had a ransom note stating that the systems could be restored to normal if it would pay the hacker three bitcoins (about \$35,000 at the time of the hack). EMOI paid the ransom and upon payment received an email from the hacker with a link to download a program that would decrypt the files. A majority of the files were returned to normal following this decryption process but an automated phone system remained encrypted as the "key" from the link did not work on the separate computer server that attended to the automated phone system.

At the time of the ransomware attack, EMOI was insured under a business owners policy issued by defendant Owners Insurance Co. which had an electronic-equipment endorsement that stated that Owners "will pay for direct physical loss or damage to 'media' which Insured owns" and also stated that "Direct physical loss of or damage to Covered Property must be caused by a Covered Cause of Loss," which the policy defined as "risks of direct physical loss." "Media" was defined as "materials on which information is recorded such as film, magnetic tape, paper tape, disks, drums and cards" and that "media" includes "computer software and reproduction of data contained on covered media."

Coverage of the ransomware attack was denied by Owners. EMOI filed suit against Owners alleging breach of its business owners insurance policy by denying coverage and bad faith.

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Owners filed a motion for summary judgment (the standard for which is there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law). The trial court granted summary judgment to Owners explaining that the evidence showed that the software and database systems were not damaged by the encryption but that EMOI was prevented from accessing or using those systems because of the encryption, that what occurred was a data compromise situation rather than a situation involving physical damage to electronic equipment. EMOI appealed and the Second District Court of Appeals, in a two to one decision, reversed on the basis that there were issues of material fact as to whether there was actual damage to EMOI's software. Owners appealed to the Ohio Supreme Court, which reversed the Second District, stating:

We find the language in the electronic-equipment endorsement to be clear and unambiguous in its requirement that there be direct physical loss of, or direct physical damage to, electronic equipment or media before the endorsement is applicable. Since software is an intangible item that cannot experience direct physical loss or direct physical damage, the endorsement does not apply in this case.

The bottom lines are, read the policy or any endorsement carefully and make sure that the policy or endorsements to the policy cover all types of loss, not just "physical loss." An example is a fire and casualty insurance policy covers physical loss to the insured property, but not loss of rent, so wise landlords get "loss of rent" coverage/endorsement.

Stephen D. Martin

Delaware Rotary Club's Taste of Downtown Delaware, June 13

The Rotary Club of Delaware will once again be hosting the Taste of Downtown Delaware, during which participants can taste food or sample beverages in 20 different food and beverage establishments in historic downtown Delaware. Manos, Martin & Pergram and Olentangy Title Agency are proud to be among the numerous sponsors. This annual event will take place on Tuesday, June 13, from 5 p.m. to 8 p.m. Tickets are \$40 and include eight tasting coupons (for those who are really hungry or thirsty, additional tasting coupons can be purchased). Stroll through the downtown Delaware area and visit participating venues for a tasty sample.

Pick up your passport at the Delaware Welcome Center, 20 East William Street. Proceeds from this event benefit community projects designated by the Delaware Rotary Foundation. For tickets and a list of participating venues, visit www.delawarerotary.org.

Ready, Set ... Zoom!

Yes, that's right - ZOOM! It's that time of year when The Alpha Group of Delaware presents the Zoom Duck Derby. This annual event will be held on Sunday, July 9, from 8 a.m. to 10 a.m. Five thousand ducks will race down the lazy river at Zoombezi Bay to raise money to support people with disabilities in Central Ohio. The money raised helps support transportation services, supportive living and workforce development, just to name a few. Adopt a duck for \$5 or adopt several and get bonus ducks. First, second and third place winning ducks will win cash prizes of \$1,500, \$1,000, and \$500, respectively. Please join us in support of this great organization. For tickets and information, visit <https://www.duckrace.com/delaware/>.