

Insurance Groups Support Travelers In 11th Circ. Breach Row

By Anne Cullen

Law360 (March 4, 2019, 10:20 PM EST) -- Two insurance trade groups have urged the Eleventh Circuit to uphold a lower court's decision that a Travelers insurer had no duty to defend a hotel operator's information technology subsidiary against data breach allegations, arguing the insurer's policy doesn't cover actions of third-party hackers.

The Complex Insurance Claims Litigation Association and the American Property Casualty Insurance Association lodged a brief in support of St. Paul Fire & Marine Insurance Co. on Friday, pushing the appellate panel to affirm a Florida federal court's September decision finding data security provider Rosen Millennium Inc. can't get coverage for a breach on its sister company's network.

Millennium argued in its January appeal that it is entitled to coverage under two St. Paul commercial general liability policies to defend against a claim for at least \$1.4 million in losses from affiliate Rosen Hotel & Resorts Inc. The hotel company sought the losses after hotel customers' card information was stolen while Millennium was providing its cybersecurity services, between 2014 and 2016.

But the Florida federal court found the personal injury provisions in those plans would have only been triggered through Millennium's actions, not those of a third party. And on Friday, the trade associations urged the Eleventh Circuit to find the same.

"As courts around the country recognize, the personal injury provisions of CGL policies address certain intentional acts taken by an insured during the course of its businesses which allegedly result in personal injury," they said. "That is not what happened here."

The release of the hotel customers' private data was prompted by hackers' installation of malware, and not by Millennium, they said, so the "specific, limited coverage of injury" does not apply.

St. Paul filed the lawsuit two years ago, pushing for a declaratory judgment that it doesn't owe Millennium coverage for investigation costs, legal fees and other costs involved in compliance with state data breach disclosure laws, along with fines imposed by Visa, MasterCard and American Express for breach of the card agreements.

Counsel and representatives for the parties did not immediately respond to requests for comment on Monday.

The amici are represented by Laura A. Foggan of Crowell & Moring LLP.

Millennium is represented by Frank R. Jakes and Darryl R. Richards of Johnson Pope Bokor Ruppel & Burns LLP.

St. Paul is represented by Esther E. Galicia and Rory E. Jurman of Fowler White Burnett PA, and Charles E. Spevacek of Meagher & Geer LLP.

The case is St. Paul Fire & Marine Insurance Co. v. Rosen Hotels & Resorts Inc., case number 18-14427, in the U.S. Court of Appeals for the Eleventh Circuit.

--Additional reporting by Jeff Sistrunk and Rick Archer. Editing by Breda Lund.