



Ohio State Court Provides a Bit of Clarification on Virtual Currency Coverage

An Ohio court recently determined that Bitcoin constitutes covered “property,” rather than “money,” under the terms of a homeowners’ insurance policy, such that coverage for its loss was not restricted to a policy sublimit for monetary losses.¹

In *Kimmelman v. Wayne Ins. Group*, the court considered a coverage action based on a theft of approximately \$16,000 worth of Bitcoin from an online account.² The insurer limited his claim to the policy’s \$200 monetary sublimit based on the position that Bitcoin constitutes “money,” rather than “property.” Kimmelman sued his insurer, Wayne Insurance Group (“Wayne”), for breach of contract and bad faith.

To bolster its argument that the policy’s monetary sublimit applies to Bitcoin, Wayne cited an array of media reports, from sources including CNN, CNET, and the *New York Times*, to demonstrate that Bitcoin is widely recognized as “money.” The only legal reference Wayne used to support its conclusion was a limited reference to an IRS document relating to the taxation of Bitcoin.³ Wayne pointed to the term “virtual currency,” which the IRS had ascribed to Bitcoin and other electronic property.

Kimmelman contended that Bitcoin is not classified as “money,” but instead constitutes covered “property” under the insurance contract. While the court found Kimmelman’s reliance on several nonbinding cases unpersuasive, it nevertheless agreed with Kimmelman’s argument that Bitcoin is covered “property.”

The court hinged its determination on the IRS Notice cited by Wayne. IRS Notice 2014-21 states, “[f]or federal tax purposes, virtual currency is treated as property.” The court found this persuasive and held that “virtual currency is recognized as property by the IRS and shall be recognized as such by this [c]ourt.”

Given the overwhelming lack of federal regulation and case law defining the treatment of virtual currency, *Kimmelman* will likely be cited in cases addressing the same or similar issues going forward. This pro-policyholder decision gives the first win in this new area of coverage law to insureds. Additionally, *Kimmelman* and its inevitable progeny may prompt reluctant insurers to take a more proactive approach to virtual currency, providing better guidance as to what is and is not covered and how those coverages are limited.

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¹ *Kimmelman v. Wayne Insurance Group*, Case No. 18 CV 1041 (Sept. 25, 2018), Court of Common Pleas, Franklin County, Ohio, Civil Division.

² Bitcoin is a decentralized virtual currency system with no physical banks associated with it. The asset is held in a virtual wallet containing a random number sequence. The virtual wallet provides no name or other identifying information. Using the virtual wallet, Bitcoin can be seamlessly traded and transferred among individuals. Since its inception in 2009, Bitcoin has developed a reputation for volatility, making risk assessment difficult for insurers.

³ IRS Virtual Currency Guidance, 2014-16 I.R.B. 938, 2014 WL 1224474 (Mar. 26, 2014) (“IRS Notice 2014-21”).