

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
GREENVILLE DIVISION**

Greenville Federal Credit Union,

Plaintiff,

v.

CUMIS Insurance Society, Inc. d/b/a  
TruStage,

Defendant.

C.A. No.: 6:25-cv-04940-DCC

**ANSWER AND AFFIRMATIVE  
DEFENSES**

Defendant CUMIS Insurance Society, Inc. d/b/a TruStage (“CUMIS”), through undersigned counsel, respectfully submits this Answer and Affirmative Defenses to the Complaint (“Complaint”) filed by Plaintiff Greenville Federal Credit Union (“GFCU”). CUMIS denies each and every allegation, claim, and cause of action unless specifically admitted herein. Subject to these denials and the affirmative defenses set forth herein, CUMIS responds to the individually numbered allegations of the Complaint as follows:

**JURISDICTION AND VENUE**

1. The allegations of Paragraph 1 are admitted.
2. The allegations of Paragraph 2 are denied as stated. CUMIS admits that it is an insurance company and that it is licensed to issue insurance products in the State of South Carolina (including in Greenville County). CUMIS denies that it is organized under the laws of the State of Wisconsin. CUMIS is organized under the laws of the State of Iowa, although it does maintain its principal place of business in Madison, Wisconsin.
3. The allegations of Paragraph 3 do not involve factual allegations but rather GFCU’s characterization of its own claims in this action. No response is therefore required. To the extent

that a response is deemed to be required, CUMIS admits only that it issued Fidelity Bond No. 297541-14 to GFCU, that the Bond had a coverage period of September 1, 2023 (at 12:01 am) to September 1, 2024 (at 12:01 am), that Exhibit 1 contains certain pages from the Bond, and that CUMIS has denied GFCU's claim under the Bond. CUMIS expressly denies that there was a "failure" to pay a claim or that the attached pages of the Bond are the only relevant pages.

4. The allegations of Paragraph 4 are denied as stated. CUMIS admits that the actions that are alleged to have occurred and which form the basis of GFCU's claim under the Bond occurred in Greenville County. CUMIS denies only that these actions resulted in a Loss for which a claim was payable under the Bond.

5. The allegations of Paragraph 5 assert the legal conclusion that the Court of Common Pleas of Greenville County, South Carolina, where the complaint was originally filed, has subject matter jurisdiction over the action and that venue was proper in that Court. The matter has since been removed to this Court, and those allegations are therefore moot. To the extent a response is required, CUMIS admits that this Court has jurisdiction over this case and that venue is proper in this Court.

### **FACTS**

6. The allegations of Paragraph 6 are admitted.

7. The allegations of Paragraph 7 are denied as stated. CUMIS denies only that any loss of currency that occurred as a result of the attack described in paragraph 7 constituted a "Loss" for which insurance coverage was provided under the Bond at issue. CUMIS admits the remaining allegation of this paragraph 7.

8. The allegations of Paragraph 8 are admitted.

9. The allegations of Paragraph 9 are denied as stated. CUMIS admits only that the individuals identified used certain electronic devices to perpetrate their attack. CUMIS denies that

this device “clear[ed] and route[d] the transactions” “without going through GFCU’s network.” To the contrary, the message between the ATM and GFCU’s network were routed through the electronic devices so that the device could intercepted “decline” messages from GFCU’s network and alter those messages to instruct the ATMs to dispense the requested cash.

10. The allegations of Paragraph 10 are admitted.

11. The allegations of Paragraph 11 are denied.

12. The allegations of Paragraph 12 are denied as stated. CUMIS admits that GFCU submitted a claim for indemnification in connection with the referenced transactions. CUMIS denies that any loss of currency that occurred as a result of the attack described in paragraph 7 constituted a “Loss” for which insurance coverage was provided under the Bond at issue.

13. The allegations of Paragraph 13 paraphrase both from CUMIS’s letter sent on January 10, 2025, and from provisions of the Bond, both of which are documents that speak for themselves. CUMIS denies any allegations inconsistent with those documents. To the extent a response is deemed to be required, CUMIS admits that its denial letter dated January 10, 2025 cited the Bond’s Plastic Card/PIN Exclusion and that this paragraph accurately paraphrases the terms of the Plastic Card/PIN exclusion found in the “Exclusions” section of the Bond.

14. The allegations of Paragraph 14 paraphrase both from CUMIS’s denial letter sent on January 10, 2025, and from provisions of the Bond, both of which are documents that speak for themselves. CUMIS denies any allegations inconsistent with those documents. To the extent a response is deemed to be required, CUMIS admits that its denial letter dated January 10, 2025 cited the “Automated Teller Machines” Exclusion and that this paragraph accurately paraphrases the terms of the that exclusion found in the “Exclusions” section of the Bond.

15. The allegations of Paragraph 15 paraphrase from CUMIS’s denial letter sent on January 10, 2025, which is a document that speaks for itself. CUMIS denies any allegations

inconsistent with that document. To the extent a response is deemed to be required, CUMIS admits that the January 10, 2025 letter stated “[w]hen two Exclusion [sic] are relevant to a loss, potential coverage under the Bond is limited to coverage exceptions common to both Exclusions.”

16. The allegations of Paragraph 16 paraphrase from a letter dated January 31, 2025 from GFCU’s counsel, which is a document that speaks for itself. CUMIS denies any allegations inconsistent with that document. To the extent a response is deemed to be required, CUMIS admits that in that letter counsel from GFCU took the position that both the Kiosk Endorsement and the On Premises Coverage provisions of the Bond provide coverage. CUMIS denies that those provisions provide coverage in this instance.

17. The allegations of Paragraph 17 paraphrase from a provision of the Bond, which is a document that speaks for itself. CUMIS denies any allegations inconsistent with that document. To the extent a response is deemed to be required, CUMIS admits only that On Premises coverage is an exception to the ATM Exclusion, and that this paragraph accurately, but incompletely, quotes from the On Premises coverage provision of the Bond.

18. The allegations of Paragraph 18 paraphrase from a provision of the Bond, which is a document that speaks for itself. CUMIS denies any allegations inconsistent with that document. To the extent a response is deemed to be required, CUMIS admits only that the Bond defines “Covered property” to mean “physical (not electronic) items in which you have a financial interest or which are held by you in any capacity” and states that currency, coins, bank notes or Federal Reserve Notes are specific examples of “Covered property.”

19. The allegations of Paragraph 19 paraphrase from a letter from CUMIS dated March 3, 2025, which is a document that speaks for itself. CUMIS denies any allegations inconsistent with that document. To the extent a response is deemed to be required, CUMIS admits only that the Kiosk Endorsement contains a provision that replaces the “Plastic Card/PIN Exclusion” in the

Exclusions section of the Bond with a new “Plastic Card/PIN” Exclusion, that the new “Plastic Card/PIN” Exclusion lists Electronic Crime Coverage as an exception to the exclusion, “but only if the loss involves a transaction at a ‘kiosk,’ where a plastic card may be used strictly as an ‘authentication mechanism,’ but the plastic card number is not used for clearing or routing the transaction,” and that the allegations of this paragraph, accurately, though incompletely, allege that CUMIS’s stated position is that this exception to the Exclusion does not apply.

20. The allegations of Paragraph 20 paraphrase from a letter from CUMIS dated March 3, 2025, which is a document that speaks for itself. CUMIS denies any allegations inconsistent with that document. To the extent a response is deemed to be required, CUMIS admits only that its letter did not deny that the claimed loss at issue would generally fall within the scope of the Bond’s On Premises coverage. CUMIS denies that it asserted that the Plastic Card/PIN Exclusion “trumps all other provisions under the facts of this case.” CUMIS admits only that it upheld its denial on the grounds that the Plastic Card/PIN Exclusion squarely applies and that On Premises coverage is not an exception to that Exclusion.

21. The allegations of Paragraph 21 are denied.

22. The allegations of Paragraph 22 are denied.

**FOR A FIRST CAUSE OF ACTION  
(Declaratory Judgment)**

23. CUMIS incorporates its responses to the foregoing paragraphs as if the same had been restated fully herein.

24. The allegations of Paragraph 24 are admitted.

25. The allegations of Paragraph 25 are not statements of fact but conclusions of law to which no response is required. To the extent a response is deemed to be required, these allegations are denied. By way of further response, upon removal any action seeking a declaratory judgment

is governed not by S.C. Code Ann. § 15-53-20 but by the Federal Declaratory Judgment Act. *See Hartford Fire Ins. Co. v. Harleysville Mut. Ins. Co.*, 736 F.3d 255 (4th Cir. 2013).

26. The allegations of Paragraph 26 are not statements of fact but conclusions of law to which no response is required. To the extent a response is deemed to be required, these allegations are denied. By way of further response, upon removal any action seeking a declaratory judgment is governed not by S.C. Code Ann. § 15-53-30 but by the Federal Declaratory Judgment Act. *See Hartford Fire Ins. Co. v. Harleysville Mut. Ins. Co.*, 736 F.3d 255 (4th Cir. 2013).

27. The allegations of Paragraph 27 are not statements of fact but conclusions of law to which no response is required. To the extent that a response is deemed to be required, CUMIS does not contest that that is a justiciable controversy to be determined under the Federal Declaratory Judgment Act.

28. The allegations of Paragraph 28 are not statements of fact but rather a description of the relief that GFCU seeks. No response is therefore required. To the extent a response is deemed to be required, CUMIS denies that GFCU is entitled to the relief it seeks.

**FOR A SECOND CAUSE OF ACTION  
(Breach of Contract)**

29. CUMIS incorporates its responses to the foregoing paragraphs as if the same had been restated fully herein.

30. The allegations of Paragraph 30 are admitted.

31. The allegations of Paragraph 31 are denied.

32. The allegations of Paragraph 32 are denied as stated. CUMIS admits that GFCU has made a claim for reimbursement under the Bond and that the claim was denied. CUMIS denies all remaining allegations in this paragraph, including specifically that its denial was “in violation of the Bond’s terms.”

33. The allegations of Paragraph 33 are denied.

### **AFFIRMATIVE AND OTHER DEFENSES**

Having answered the individually numbered paragraphs of the Complaint, CUMIS asserts the following defenses. By setting forth these defenses, CUMIS does not assume the burden of proving any fact, issue, or element of a cause of action where such burden properly belongs to GFCU. Moreover, nothing stated herein is intended or shall be construed as an admission that any particular issue or subject matter is relevant to GFCU's allegations.

#### **FIRST AFFIRMATIVE DEFENSE (Failure to State a Claim)**

GFCU's claims are barred, in whole or in part, because its Complaint fails to allege facts sufficient to state a claim upon which relief may be granted.

#### **SECOND AFFIRMATIVE DEFENSE (Policy Exclusions)**

GFCU's claims are barred and fail as a matter of law because coverage is excluded by certain of the the Bond's exclusions, including but not limited to the Policy's "Plastic Card/PIN" Exclusion, as modified by the Bond's Kiosk endorsement and/or the Policy's "Automated Teller Machines" Exclusion.

#### **THIRD AFFIRMATIVE DEFENSE (Deductible)**

GFCU's recovery, if any, is subject to the amount of the applicable deductible(s) and/or coverage limit(s) set forth within the fidelity. Specifically, the Bond's "Electronic Crime" coverage is subject to a single loss deductible of \$10,000 and single loss limit of liability of \$3 million, and the Bond's "On Premises" coverage is subject to a single loss deductible of \$10,000 and a single loss limit of liability of \$1,000,000.

**FOURTH AFFIRMATIVE DEFENSE**  
**(No Attorneys Fees)**

To the extent that GFCU seeks an award of attorney's fees, GFCU's request is barred on the grounds that GFCU has not alleged any facts, nor asserted any cause of action, that would justify an award of attorney's fees. The Bond does not provide for an award of attorney's fees in the event of litigation and GFCU has not cited any law that would permit such an award.

**FIFTH AFFIRMATIVE DEFENSE**  
**(Reservation)**

CUMIS reserves the right to plead any additional affirmative defenses that become available or known as this action proceeds, including, but not limited to, those defenses that become known to CUMIS through discovery. CUMIS reserves the right to amend its Answer to add such additional defenses or to delete any affirmative defenses that it determines are not applicable, as well as any counterclaims and third-party claims, based upon information revealed during the discovery process.

WHEREFORE, Defendant CUMIS prays for relief as follows:

1. That the Court enter judgment against GFCU and in favor of CUMIS and that GFCU take nothing;
2. That the Court award CUMIS its costs; and
3. That the Court award CUMIS any further relief that this Court deems appropriate.

*(signature block on following page)*



**HAYNSWORTH SINKLER BOYD, P.A**

s/ Jonathan D. Klett

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June 12, 2025

Greenville, South Carolina