

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

DEL-ONE FEDERAL CREDIT UNION,

Plaintiff,

v.

CUMIS INSURANCE SOCIETY, INC.,

Defendant.

Civil Action No. 1:25-cv-1034-GBW

ANSWER AND AFFIRMATIVE DEFENSES

Defendant CUMIS Insurance Society, Inc. (“CUMIS”), by and through its undersigned counsel, respectfully submits this Answer and Affirmative Defenses to the Complaint (“Complaint”) filed by Plaintiff Del-One Federal Credit Union (“Del-One”). 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:

The Parties

1. Plaintiff Del-One Federal Credit Union, Charter No. 1319 is a corporation chartered under the laws of the United States, with a principal place of business located at 270 Beiser Blvd., Dover, Delaware 19904.

Response: Admitted

2. Upon information and belief, Defendant CUMIS Insurance Society, Inc. is an Iowa domiciled stock property and casualty company that is engaged in the business of insurance and directly markets and sells insurance within the State of Delaware.

Response: Admitted.

Jurisdiction and Venue

3. This Court has subject matter jurisdiction over this action pursuant to Art. IV, § 7 of the Delaware Constitution and 10 *Del. C.* § 541. This Court has the power to declare the parties' rights and obligations under 10 *Del. C.* § 6501 et seq.

Response: The allegations of this paragraph relate to the subject matter jurisdiction of the Superior Court of the State of Delaware and are therefore moot, as this case has been removed to the United States District Court for the District of Delaware. No response is therefore required. Moreover, the allegations of this paragraph are not allegations of fact but rather legal conclusions to which no response is required. To the extent that a response is deemed to be required, CUMIS does not contest that the United States District Court for the District of Delaware has subject matter jurisdiction over this matter.

4. This Court has personal jurisdiction over the Defendant under 10 *Del. C.* § 3104(c)(6) because the Defendant has contracted to provide insurance in the State of Delaware under a policy of insurance issued to an entity resident in and doing business in Delaware and covering risks located in the State of Delaware.

Response: The allegations of this paragraph relate to the personal jurisdiction of the Superior Court of the State of Delaware and are therefore moot, as this case has been removed to the United States District Court for the District of Delaware. No response is therefore required. Moreover, the allegations of this paragraph are not allegations of fact but rather legal conclusions to which no response is required. To the extent that a response is deemed to be required, CUMIS does not contest that the United States District Court for the District of Delaware has personal jurisdiction over CUMIS with respect to this matter.

Nature of the Action

5. This is an action seeking recovery of compensatory and punitive damages, declaratory relief, attorneys' fees and other relief arising from Defendant's breach of contract, bad faith, and otherwise wrongful refusal to honor its contractual obligations under a certain policy of insurance denominated as Fidelity Bond 320586 07/01/2024-07/01/2025 (the "Bond") issued to Plaintiff.

Response: Denied as stated. CUMIS admits only that it issued a fidelity bond with bond number 320586-3, effective at 12:01 a.m. on 07/01/2024 and expiring on 07/01/2025 at 12:01 a.m. to Del-One. CUMIS denies the remaining allegations of this paragraph, including any allegation that CUMIS is liable for breach of contract or bad faith, or that it wrongfully refused to honor its contractual obligations under the Bond.

6. This action seeks: (a) a declaration that the Defendant must cover Plaintiff's losses arising out of 1) man-in-the middle cyber-attack thefts of funds up to a total of \$462,800.00 (the "Man-in-the-Middle Thefts"), and 2) payment of fraudulent counterfeited checks from various Home Equity Line of Credit accounts totaling \$252,050.36 (the "HELOC Thefts"); and (b) damages resulting from Defendant's breach of contract in refusing to pay insurance proceeds for these covered losses.

Response: The allegations of this paragraph are not allegations of fact but rather Del-One's own characterization of the nature of its claims and the relief it seeks. No response is therefore required. To the extent that a response is deemed to be required, CUMIS denies that Del-One is entitled to the declaration that it seeks, denies that Del-One is entitled to the damages it seeks, and denies that the "Man-in-the-Middle Thefts" and/or the "HELOC Thefts" resulted in covered losses under the Bond.

Background

7. Defendant issued the Bond to Plaintiff on July 1, 2024. The Bond was in force at all times relevant to this action.

Response: Admitted.

8. The Bond broadly extends various coverages to Plaintiff, including but not limited to theft of covered property on Plaintiff’s premises and for losses resulting from the payment of counterfeit checks.

Response: The allegations of this paragraph are not factual allegations but Del-One’s characterization of insurance coverage provided by the Bond. The interpretation of the coverages provided by the Bond are conclusions of law to which no response is required. To the extent that a response is deemed to be required, CUMIS denies any allegations or characterizations contrary to the terms of the Bond. CUMIS admits only that the Bond provides insurance coverages pursuant to the terms and conditions set forth therein.

A. Man-in-the-Middle Thefts

9. Beginning on or about September 22, 2024, through September 28, 2024, a crime ring made up of foreign nationals from the New York and North Carolina areas attacked various of Plaintiff’s premises specifically targeting Plaintiff’s interactive teller machines (“ITM”) using a sophisticated electronic man-in-the-middle attack. The attackers broke into multiple ITMs and installed a Raspberry Pi device. This Raspberry Pi device intercepted electronic communications between the ITM machines and Plaintiff’s network and emulated the host authorization, essentially “telling” the computer inside of the ITM it is authorized to dispense cash unconnected to any account established with Plaintiff. The loss amount from the Man-in-the-Middle Thefts totaled \$462,800.00. This is a covered loss under the Bond.

Response: After reasonable investigation, CUMIS lacks information and knowledge sufficient to form a belief with regard to the truth of the allegations set forth in this paragraph, and therefore denies the same. By way of further response, CUMIS denies that the \$462,800.00 that was purportedly dispensed from Del-One's ITM machines as a result of these attacks constituted a "loss" and that any such "loss" was a covered loss under the terms of the Bond.

10. Plaintiff initially notified Defendant of the Man-in-the-Middle Thefts on December 27, 2024, which is the date Plaintiff discovered the loss.

Response: Admitted in part and denied in part. Admitted only that Del-One notified CUMIS on December 27, 2024, that it appeared that four of its ITM machines had been the subject of a hacking attack. Denied that the funds disbursed as a result of that attack were a covered loss under the terms of the Bond.

11. On or about January 14, 2025, Plaintiff submitted a proof of loss, claim number B132537 for coverage of the losses incurred due to the Man-in-the-Middle Thefts. This notification was timely under the terms of the Bond.

Response: Admitted in part and denied in part. Admitted that on or about January 14, 2025, Del-One submitted to CUMIS a "Proof of Loss" statement seeking coverage for \$466,565.00 in funds disbursed from ITM machines. It is also admitted that the proof of loss was timely submitted. It is denied that the claim was assigned claim number B132537 (it was assigned claim number B1325372). CUMIS also denies any implication that the claimed loss was covered under the terms of the Bond.

12. On February 4, 2025, Defendant improperly denied coverage for the Man-in-the-Middle Thefts.

Response: Admitted in part and denied in part. CUMIS admits that on February 4, 2025, it sent a letter to Del-One informing Del-One that the information provided to CUMIS does not support coverage under the Bond. CUMIS denies that its position was “improper.”

13. Defendant’s wrongful denial of coverage for the Man-in-the-Middle Thefts is in bad faith, arbitrary, unreasonable and lacks any reasonable justification.

Response: Denied.

B. The HELOC Thefts

14. Beginning on or about February 20, 2025, through March 25, 2025, Plaintiff identified a counterfeit check fraud scheme affecting multiple Plaintiff members’ home equity line of credit or “HELOC” accounts resulting in a total loss of \$252,050.32. This loss is covered under the Bond.

Response: Admitted in part and denied in part. CUMIS admits only that Del-One identified a number of checks drawn on the accounts of several of its members’ home equity lines of credit that do not appear to have been authorized by the members. CUMIS denies that majority of the implicated checks constituted “counterfeit” checks as defined by the Bond, and further the amounts disbursed from those accounts is a covered loss under the terms of the Bond.

15. On or about April 30, 2025, Plaintiff timely submitted a proof of loss, claim number B1336913 for coverage under the Bond of the losses incurred due to the fraudulent counterfeit HELOC checks. This notice was timely under the Bond.

Response: Admitted in part and denied in part. CUMIS admits that Del-One submitted a claim to CUMIS and that that claim was assigned claim number B1336913. CUMIS also admits that on April 30, 2025, Del-One submitted to CUMIS a “Proof of Loss” statement seeking coverage for \$252,050.36 in funds obtained from members’ HELOC accounts via fraudulent checks and/or in-person advances received at a branch. It is also admitted that the proof of loss was timely

submitted. CUMIS denies that the amounts obtained and sought constitute a covered “loss” under the terms of the bond or that the checks constitute “counterfeit” checks as defined in the Bond.

16. On May 20, 2025, Defendant improperly denied coverage for the HELOC Thefts.

Response: Denied. By way of further response, on May 20, 2025, CUMIS informed Del-One that the Bond would in fact respond to a portion (though not all) of the claimed losses, but that said losses were not in excess of the applicable single loss deductible. CUMIS specifically denies that its coverage position was “improper.”

17. Defendant’s wrongful denial of coverage for the HELOC Thefts is in bad faith, arbitrary, unreasonable and lacks any reasonable justification.

Response: Denied.

COUNT I – DECLARATORY JUDGMENT

18. Plaintiff incorporates the allegation of paragraphs 1 to 17 as if the same were fully set forth herein.

Response: CUMIS incorporates its responses to the allegations set forth in paragraphs 1 to 17 as though set forth in their entirety herein.

19. This is a claim for relief for a declaratory judgment pursuant to 10 *Del. C.* § 6501 *et seq.*

Response: The allegations of this paragraph are not factual allegations but rather Del-One’s characterization of the nature of its claim. No response is therefore required. To the extent a response is deemed to be required, CUMIS denies that Del-One is entitled to the declaration that it seeks.

20. The Bond explicitly provides for coverage for losses of covered property as set forth in the Bond.

Response: The allegations of this paragraph are not factual allegations but Del-One's characterization of insurance coverage provided by the Bond. The interpretation of the coverages provided by the Bond are conclusions of law to which no response is required. To the extent that a response is deemed to be required, CUMIS admits that the Bond provides insurance coverage for losses as defined by the terms and conditions therein, but denies any allegations or characterizations contrary to the terms thereof.

21. Defendant has inappropriately denied coverage for the Man-in-the-Middle Thefts and HELOC Thefts.

Response: Denied.

22. Defendant's denial of coverage is a breach of the stated language of the Bond.

Response: Denied.

23. A controversy exists [sic] between the Plaintiff and Defendant as to whether the Bond mandates coverage for the Man-in-the-Middle Thefts and HELOC Thefts.

Response: Admitted

24. Plaintiff seeks a judicial declaration from the Court that, subject to applicable deductible amounts, the Bond covers the losses Plaintiff has incurred as a result of the Man-in-the-Middle Thefts and the HELOC Thefts.

Response: The allegations of this paragraph are not factual allegations but rather Del-One's characterization of the nature of its claim. No response is therefore required. To the extent a response is deemed to be required, CUMIS denies that Del-One is entitled to the declaration that it seeks.

25. This controversy is of sufficient immediacy to justify the issue of a declaratory judgment, and the issue of a declaratory judgment will terminate the controversy. The issue is ripe for judicial review.

Response: The allegations in this paragraph are not factual allegations but conclusions of law, to which no response is required. To the extent that a response is deemed to be required, CUMIS does not dispute that a declaratory judgment action is ripe and appropriate in this matter.

COUNT II – BREACH OF CONTRACT

26. Plaintiff incorporates the allegation of paragraphs 1 to 25 as if the same were fully set forth herein.

Response: CUMIS incorporates its responses to the allegations set forth in paragraphs 1 to 25 as though set forth in their entirety herein.

27. Plaintiff and Defendant entered into the Bond, a legally binding and enforceable agreement.

Response: Admitted.

28. Plaintiff paid premiums under the Bond with the expectation that Plaintiff would receive coverage for losses as set forth in the bond.

Response: Admitted in part, denied in part. CUMIS admits that Del-One paid premiums in connection with the Bond. CUMIS lacks knowledge and information sufficient to form a belief as to the truth of the allegations regarding Del-One's expectations, and therefore denies the same.

29. The Bond explicitly provides coverage for losses of covered property as set forth in the Bond. Such coverage includes losses incurred by Plaintiff through the Man-in-the-Middle Thefts as well as that described in the HELOC Thefts.

Response: The allegations of this paragraph are not factual allegations but Del-One's characterization of insurance coverage provided by the Bond. The interpretation of the coverages

provided by the Bond are conclusions of law to which no response is required. To the extent that a response is deemed to be required, CUMIS admits that the Bond provides insurance coverage for losses as defined by the terms and conditions therein, but denies any allegations or characterizations contrary to the terms thereof. CUMIS further denies that the Bond requires coverage for the losses purportedly incurred by Plaintiff through the Man-in-the-Middle Thefts as well as for all of the losses purportedly incurred by Plaintiff through the HELOC Thefts.

30. Defendant has breached the terms of the Bond by failing and refusing to pay Plaintiff and denying coverage for the Man-in-the-Middle Thefts and HELOC Thefts.

Response: Denied.

31. As a direct result of Defendant's breach of contract, Plaintiff has been deprived of the benefits of insurance coverage for which premiums were paid under the Bond. As a result of Defendant's breach of contract, Plaintiff has suffered economic loss.

Response: Denied.

COUNT III – BAD FAITH

32. Plaintiff incorporates the allegations of paragraphs 1 to 31 as if the same were fully set forth herein.

Response: CUMIS incorporates its responses to the allegations set forth in paragraphs 1 to 31 as though set forth in their entirety herein.

33. Defendant lacks reasonable justification in refusing to cover the losses incurred due to the Man-in-the-Middle Thefts and HELOC Thefts.

Response: Denied.

34. Defendant lacks meritorious defenses to its liability to Plaintiff.

Response: Denied.

35. Defendant has acted in bad faith in denying coverage for the losses incurred due to the Man-in-the-Middle Thefts and HELOC Thefts.

Responses: Denied.

36. Plaintiff has incurred attorneys' fees and additional costs relating to Defendant's bad faith denial of coverage.

Responses: 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 Del-One. Moreover, nothing stated herein is intended or shall be construed as an admission that any particular issue or subject matter is relevant to Del-One's allegations.

FIRST AFFIRMATIVE DEFENSE (Failure to State a Claim)

Del-One'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 Exclusion – Plastic Card/PIN Exclusion)

Del-One's claims related to the purported Man-in-the-Middle Thefts are barred, in whole or in part, because its purported losses are subject to the Bond's Plastic Card/PIN Exclusion. Under the exclusion, CUMIS will not pay for "[a]ny loss resulting directly or indirectly from the use of a personal identification number (PIN) to access an 'automated teller machine,' or the use of a plastic or other type of card, or plastic card number, to effect a transaction[.]" Based upon the information provided to CUMIS during the course of its investigation of Del-One's claim, all withdrawals from Del-One's ITM machines were effected through the use of a personal

identification number to access those ITMs and the use of a plastic card and a plastic card number to effect the transactions. Purported losses resulting therefrom are therefore excluded from coverage under the terms of the Bond.

**THIRD AFFIRMATIVE DEFENSE
(No Forgery or Counterfeit Checks)**

Del-One's claims related to the purported HELOC Thefts are barred, in whole or in part, to the extent that the losses resulting from the HELOC Thefts do not qualify for benefits under the Bond's Forgery or Alteration Coverage or the Bond's Counterfeit Share Draft, Check Or Securities Coverage.

The Bond's Forgery or Alteration Coverage provides coverage for Del-One's loss resulting directly from the "forgery" or alteration of an "instrument." The Bond defines "forgery" as affixing the handwritten signature, or a reproduction of a handwritten signature, of another natural person without authorization or ratification, and with the intent to deceive. There is no coverage under the Bond for a number of the purported HELOC Thefts because the theft was not accomplished through the use of the member's signature without authorization or ratification.

The Bond's Counterfeit Share Draft, Check Or Securities Coverage provides coverage for a loss resulting directly from a "counterfeit" check, draft or share draft, but not a money order, that was finally paid against Del-One's corporate share or checking account or a share draft or checking account that Del-One's accountholder had with Del-One. The Bond defines "counterfeit" as an "imitation which is intended to deceive and to be taken as an original." There is no coverage here because the evidence provided to CUMIS in its investigation of Del-One's claims establishes that none of the purported HELOC Thefts was accomplished by means of a "counterfeit" in part because the checks that were drawn upon the members' HELOC accounts were not imitations of original checks for those accounts (which did not exist). Moreover, there was no coverage here

because the funds involved were not obtained from a members share draft or checking accounts, but were rather drawn against the members' respective HELOCs.

**FOURTH AFFIRMATIVE DEFENSE
(Deductible)**

Del-One's recovery, if any, is subject to any applicable deductible(s) and/or coverage limit(s) set forth within the Bond.

**FIFTH AFFIRMATIVE DEFENSE
(Punitive Damages – Due Process Clause)**

To the extent that Del-One seeks an award of punitive damages, CUMIS invokes its right under the due process clause of the Fifth Amendment of the United States Constitution as applied to the states through the Fourteenth Amendment of the United States Constitution. CUMIS affirmatively pleads that Del-One's pleading of punitive and/or exemplary damages violates the due process clause of the Fifth and Fourteenth Amendments.

**SIXTH AFFIRMATIVE DEFENSE
(Reservation)**

CUMIS has not knowingly or voluntarily waived any applicable affirmative defense and reserves its right to assert and rely upon such other applicable affirmative defenses as may become available or apparent during the course of this action.

WHEREFORE, Defendant CUMIS prays for relief as follows:

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

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