Lose your Bitcoin? Insurance has you covered.

I know enough about Bitcoin to be dangerous. I have a friend, Larry, who owns a Bitcoin company. Larry is smart, I'm not (as it pertains to virtual currency). After casual conversation with Larry and watching CNBC, I began to wonder how Bitcoin, a virtual currency, was being classified – what exactly is it? I discovered that the IRS was treating it as property and that those fluent in the currency markets were publicly differentiating between money and Bitcoin. Further, I learned it is certainly is not a security – no one believes that.

Then, a Florida court opined on Bitcoin. In *State v. Espinoza*, No F14-2923 (Fla. Cir. July 22, 2016), the court held that "Bitcoin may have some attributes in common with what we commonly refer to as money but differ in many important aspects. While Bitcoin can be exchanged for items of value, they are not a commonly used means of exchange… it is very clear, even to someone with limited knowledge in the area, that Bitcoin has a long way to go before it is the equivalent of money…"

This case peaked my interest. I began to wonder how Bitcoin fit into an insurance context. You see, I am an insurance lawyer. I represent policyholders against insurance companies – bad ones. If someone lost or had Bitcoin stolen – if it could even be lost or taken – would it be covered by insurance? Interestingly, I quickly found out that Bitcoin could be taken or lost. Actually, about 20% of all Bitcoins are believed to be lost. They would have a value of about $20 billion at July 2018 prices. Also, about one million Bitcoins, valued at $7 billion in July 2018, have been stolen.[1]

My theory was that if Bitcoin was property – like a TV – and was not subject to a sublimit in an insurance policy, then it would be covered by insurance. To further detail, typical property policies cover personal property owned or used by an insured while it is anywhere in the world if it sustains "property damage," defined as physical injury to, destruction of, or loss of use of tangible property. Typical policies then apply sublimits to certain types of personal property:

- $200 on money, bank notes, bullion, gold other than goldware, silver other than silverware, platinum other than platinumware, coins, medals, scrip, stored value cards and smart cards.

- $1,500 on securities, accounts, deeds, evidences of debt, letters of credit, notes other than bank notes, manuscripts, personal records, passports, tickets and stamps. This dollar limit applies to these categories re- gardless of the medium (such as paper or computer software) on which the material exists.

- $1,500 on watercraft of all types, including their trailers, furnishings, equipment and outboard engines or mo- tors.

[1] Krause, Elliott (5 July 2018). "A Fifth of All Bitcoin Is Missing. These Crypto Hunters Can Help". Wall Street Journal.

- $1,500 on trailers or semitrailers not used with watercraft of all types.
- $1,500 for loss by theft of jewelry, watches, furs, precious and semiprecious stones.
- $2,500 for loss by theft of firearms and related equipment.

Property insurance policies also usually exclude certain types of property: motor vehicles, animals, hovercafts. Well, my theory was that Bitcoin was property and it was not listed in the sublimits, nor was it excluded. However, I needed a client and an insurance company to actually test my theory.

Insert James Kimmelman and Wayne Mutual Insurance Group into the story. The story is pretty simple, Mr. Kimmelman had Bitcoin; it was stolen. He submitted a claim to his insurance company and it did exactly what it had no basis for doing. It sent him a check for $500 (the sublimit for money) and called Bitcoin money. YES!

I became involved and eloquently wrote to Wayne Mutual explaining that Bitcoin was not money. I thought I was convincing. Shockingly, Wayne Mutual did not and it stood by its contention that Bitcoin is money. YES!

I sued Wayne Mutual on behalf of James Kimmelman and we briefed this issue: is Bitcoin money or property? In my opinion Wayne Mutual did not have a single credible source to support its findings. At one point, they cited CNET. The Court found no helpful case authority and ultimately relied on Internal Revenue Service Notice 2014-21, which describes Bitcoin as "virtual currency" and states: "For federal tax purposes, virtual currency is treated as property."

The court held:

> Accordingly, the Court finds Bitcoin, although termed "virtual currency," is recognized as property by the IRS and shall be recognized as such by this Court.

A few things are going to happen. First, I am going to litigate against Wayne Mutual both on the contract and its lack good faith. Second, Wayne Mutual will likely appeal – although they have no authority whatsoever. Third, everyone reading this article will shortly get a letter in the mail from their insurance company assigning a sublimit of $500 to virtual currency. Sorry, not sorry.