

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

TECH DATA CORPORATION,	§	
	§	
Plaintiff,	§	
	§	
v.	§	CIVIL CASE NO. 16-11197
	§	
TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA and ZURICH AMERICAN INSURANCE COMPANY,	§	
	§	
Defendants.	§	

**DEFENDANT TRAVELERS CASUALTY AND SURETY
COMPANY OF AMERICA’S ANSWER TO PLAINTIFF’S COMPLAINT**

Defendant Travelers Casualty and Surety Company of America (“Travelers”) responds to the Complaint for Declaratory Relief and Damages (the “Complaint”) filed by Plaintiff Tech Data Corporation (“Plaintiff”), as follows:

PRELIMINARY STATEMENT¹

1. Admitted only that Travelers issued to Tech Data the Travelers Primary Policy. Travelers lacks knowledge or information sufficient to form a belief about the truth of the allegations concerning Defendant Zurich American Insurance Company (“Zurich”). All other allegations are denied.

PARTIES

- 2. Travelers lacks knowledge or information sufficient to form a belief about the truth of these allegations.
- 3. Admitted.

¹ The headings and paragraphs numbered 1. through 79. herein correspond to those in the Complaint, to which they respond.

4. Travelers lacks knowledge or information sufficient to form a belief about the truth of these allegations.

JURISDICTION AND VENUE

5. Admitted.

6. This paragraph contains legal conclusions to which no response is required; however, Travelers does not dispute that the Court has subject matter jurisdiction.

7. Travelers lacks knowledge or information sufficient to form a belief about the truth of these allegations.

FACTUAL BACKGROUND

A. Tech Data's Insurance Policies

8. Admitted.

9. through 10. Travelers lacks knowledge or information sufficient to form a belief about the truth of these allegations.

11. through 21. The allegations in these Paragraphs are Plaintiff's characterizations of provisions of the Travelers Primary Policy, which speaks for itself and provides coverage subject to its terms, conditions, and limitations. Travelers denies Plaintiff's allegations to the extent they are inconsistent with the terms, conditions, and limitations of the Travelers Primary Policy.

22. Admitted.

23. through 25. The allegations in these Paragraphs are Plaintiff's characterizations of provisions of the Travelers Primary Policy, which speaks for itself and provides coverage subject to its terms, conditions, and limitations. Travelers denies Plaintiff's allegations to the

extent they are inconsistent with the terms, conditions, and limitations of the Travelers Primary Policy.

B. The SEC Investigation

26. Admitted.

27. through 29. Travelers lacks knowledge or information sufficient to form a belief about the truth of these allegations.

30. Admitted.

31. Travelers lacks knowledge or information sufficient to form a belief about the truth of these allegations.

32. Travelers admits only that Tech Data notified Travelers of the May 16 Subpoena around May 16, 2013, specifically on May 21, 2013. Travelers lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations.

33. Travelers admits only that Tech Data notified Travelers of the June 14 Subpoena on June 14, 2013. Travelers lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations.

34. Travelers lacks knowledge or information sufficient to form a belief about the truth of these allegations.

35. Travelers admits only that Tech Data notified Travelers of the June 27 Subpoena around June 27, 2014, specifically on July 1, 2014. Travelers lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations.

36. through 37. Travelers lacks knowledge or information sufficient to form a belief about the truth of these allegations.

C. The Insurance Coverage Dispute

38. through 42. Denied.

43. Travelers lacks knowledge or information sufficient to form a belief about the truth of these allegations.

44. Admitted.

45. Travelers admits only that it issued a coverage position letter to Plaintiff dated May 28, 2013. Travelers denies Plaintiff's allegations to the extent they are inconsistent with the letter, which speaks for itself. Travelers denies Plaintiff's allegation that Travelers declined coverage.

46. Travelers admits only that Plaintiff sent a letter to Travelers dated June 24, 2013, challenging Travelers' coverage position. Travelers denies Plaintiff's allegations to the extent they are inconsistent with the letter, which speaks for itself.

47. Travelers admits only that Plaintiff sent a letter to Travelers dated August 26, 2013, submitting invoices. Travelers denies Plaintiff's allegations to the extent they are inconsistent with the letter or the accompanying invoices, which speak for themselves.

48. Travelers lacks knowledge or information sufficient to form a belief about the truth of these allegations.

49. Travelers admits only that it issued a supplemental coverage position letter to Plaintiff dated September 20, 2013. Travelers denies Plaintiff's allegations to the extent they are inconsistent with the letter, which speaks for itself. Travelers denies Plaintiff's allegation that Travelers denied coverage.

50. Travelers admits only that Plaintiff sent a letter to Travelers dated October 18, 2013, submitting invoices. Travelers denies Plaintiff's allegations to the extent they are inconsistent with the letter or the accompanying invoices, which speak for themselves.

51. Travelers admits only that it issued a supplemental coverage position letter to Plaintiff dated November 22, 2013. Travelers denies Plaintiff's allegations to the extent they are inconsistent with the letter, which speaks for itself.

52. Travelers lacks knowledge or information sufficient to form a belief about the truth of these allegations.

53. Travelers admits only that there was additional correspondence between Travelers and Plaintiff between November 2013 and April 2016, which speak for themselves. Travelers denies the remaining allegations.

54. Regarding the first sentence, Travelers admits only that Plaintiff has submitted to Travelers invoices for millions of dollars in legal fees and expenses, but denies that all such fees and expenses are related to the SEC Investigation. Regarding the second sentence, Travelers admits only that to date it has not made any reimbursement to Plaintiff; Travelers lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in this sentence. Regarding the third sentence, Travelers admits only that the amounts sought by Tech Data exceed the limit of the Travelers Primary Policy; Travelers lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in this sentence.

55. Denied.

COUNT I
(DECLARATORY JUDGMENT)

56. Travelers admits that Plaintiff adopts and incorporates by reference the allegations in the preceding paragraphs of the Complaint, and Travelers adopts and incorporates by references its corresponding responses to those allegations.

57. through 58. Travelers admits only that Travelers and Plaintiff contracted for insurance coverage under the Travelers Primary Policy, which speaks for itself and provides coverage subject to its terms, conditions, and limitations. Travelers denies Plaintiff's allegations to the extent they are inconsistent with the terms, conditions, and limitations of the Travelers Primary Policy.

59. though 62. Denied.

63. Travelers admits only that an actual controversy exists between it and Plaintiff regarding the extent of coverage, if any, under the Travelers Primary Policy for the SEC Investigation, and denies the remaining allegations.

64. through 70. Denied.

COUNT II
(BREACH OF CONTRACT)

71. Travelers admits that Plaintiff adopts and incorporates by reference the allegations in the preceding paragraphs of the Complaint, and Travelers adopts and incorporates by references its corresponding responses to those allegations.

72. through 73. Travelers admits only that Travelers and Plaintiff contracted for insurance coverage under the Travelers Primary Policy, which speaks for itself and provides coverage subject to its terms, conditions, and limitations. Travelers denies Plaintiff's allegations

to the extent they are inconsistent with the terms, conditions, and limitations of the Travelers Primary Policy.

74. Denied.

75. Travelers lacks knowledge or information sufficient to form a belief about the truth of these allegations.

76. through 79. Denied.

REQUEST FOR RELIEF

80. Denied to the extent that this paragraph contains factual allegations that require a response, and further denied that Plaintiff is entitled to any of the relief sought.

Travelers denies each and every allegation contained in the Complaint not specifically admitted herein.

AFFIRMATIVE/ADDITIONAL DEFENSES

For further response, Travelers asserts the following Affirmative and Additional Defenses:

1. Plaintiff's Complaint fails to state a claim upon which relief can be granted.
2. Plaintiff's claims are barred, in whole or in part, by the terms, limitations, conditions, definitions, and exclusions of the Traveler Primary Policy.
3. Plaintiff's claims are barred because the amounts sought by Plaintiff do not satisfy the requirements of the Directors and Officers Individual Liability Coverage Insuring Agreement (Section I.A. of the Travelers Primary Policy, as amended by Endorsement No. PCDO-10262 Ed. 06-12, hereinafter "Insuring Agreement A") or the Organization Indemnification Liability Coverage Insuring Agreement (Section I.B. of the Travelers Primary Policy, as amended by Endorsement No. PCDO-10262 Ed. 06-12, hereinafter "Insuring Agreement B"), in that the

amounts sought do not constitute either: (i) **Loss**² that **Insured Persons** became legally obligated to pay for a **Claim** made against the **Insured Persons** for a **Wrongful Act**; or (ii) **Interview Costs** that **Insured Persons** became legally obligated to pay for an **Interview Request** made by an **Enforcement Body**.

4. Plaintiff's claims are barred, in whole or in part, because the SEC Investigation at issue in the Complaint does not satisfy the requirement under Insuring Agreements A and B of a **Claim** "made against" an **Insured Person**, as that term is defined in Section III.N. of the Travelers Primary Policy, as amended by Endorsement No. PCDO-7018 Ed. 01-09.

5. Plaintiff's claims are barred, in whole or in part, because the SEC Investigation at issue in the Complaint does not satisfy the requirements of the following subparts of the **Claim** definition (Section III.B. of the Travelers Primary Policy), which are the only potentially applicable subparts:

4. a formal civil administrative or formal civil regulatory proceeding or formal civil investigation against any **Insured Person**, commenced by the receipt of a:
 - a. notice of filed charges, investigative order, or similar document;
 - b. written notice identifying such **Insured Person** as a target of an investigating authority; or
 - c. Wells Notice from the SEC that it may commence an enforcement action against such **Insured Person**;
5. service of a subpoena on an **Insured Person** identified by name if served upon such person pursuant to an SEC formal investigative order;

* * * *

for a **Wrongful Act**, including any appeal therefrom.

² Bolded terms are defined in the Travelers Primary Policy and are used herein in accordance with those definitions.

* * * *

The other subparts of the **Claim** definition are not applicable to the SEC Investigation, or, alternatively, the SEC Investigation does not satisfy the requirements of the other subparts of the **Claim** definition.

6. Plaintiff's claims are barred, in whole or in part, because the amounts sought do not satisfy the requirements of the Organization Securities Claim Liability Coverage Insuring Agreement (Section I.C. of the Travelers Primary Policy, hereinafter "Insuring Agreement C") in that the amounts sought do not constitute **Loss** that the **Insured Organization** became legally obligated to pay for a **Securities Claim** made against the **Insured Organization**.

7. Plaintiff's claims are barred, in whole or in part, because the SEC Investigation at issue in the Complaint does not constitute a **Securities Claim** as that term is defined in Section III.Z. of the Travelers Primary Policy.

8. Plaintiff's claims are barred, in whole or in part, because the SEC Investigation at issue in the Complaint was not "for a **Wrongful Act**" (as that term is defined in Section III.EE. of the Travelers Primary Policy), as required by Insuring Agreements A, B, and C and the **Claim** definition of the Travelers Primary Policy.

9. Plaintiff's claims are barred, in whole or in part, to the extent the amounts sought do not constitute **Loss** (as that term is defined in Section III.Q. of the Travelers Primary Policy, as amended by Endorsement No. PCDO-10262 Ed. 06-12), as required by Insuring Agreements A, B, and C of the Travelers Primary Policy.

10. Plaintiff's claims are barred, in whole or in part, to the extent the amounts sought by Plaintiff do not constitute **Defense Expenses** as that term is defined in Section III.D. of the Travelers Primary Policy,

11. Plaintiff's claims are barred, in whole or in part, because the SEC Investigation at issue in the Complaint did not involve an **Interview Request** as that term is defined in Section III. of the Travelers Primary Policy, as amended by Endorsement No. PCDO-10262 Ed. 06-12.

12. Plaintiff's claims are barred, in whole or in part, because the amounts sought by Plaintiff do not constitute **Interview Costs** as that term is defined in Section III. of the Travelers Primary Policy, as amended by Endorsement No. PCDO-10262 Ed. 06-12.

13. Plaintiff's claims are barred, in whole or in part, based on the conditions of the "Defense and Settlement" section of the Travelers Primary Policy (Section V.F., as amended by Endorsement No. PCDO-10262 Ed. 06-12).

14. Plaintiff's claims are barred to the extent Plaintiff failed to comply, or the amounts sought were incurred before Plaintiff's compliance, with the "Notice" conditions of the Travelers Primary Policy (Section V.E., as amended by Endorsement No. PCDO-10262 Ed. 06-12), or to the extent

15. In the alternative, to the extent Plaintiff may establish coverage for any portion of the amounts sought, Plaintiff's recovery is subject to the "Allocation" condition of the Travelers Primary Policy (Section V.G.).

16. In the alternative, to the extent Plaintiff may establish coverage for any portion of the amounts sought, Plaintiff's recovery is subject to the Limits of Liability and Retentions as set forth in Item 5 of the Declarations of the Travelers Primary Policy.

17. Plaintiff's claims may be barred, in whole or in part, based on the legal and/or equitable doctrines of waiver, estoppel, ratification, unclean hands, and failure to mitigate damages.

18. The insurance coverage provided by Travelers is subject to and limited by all of the terms, limitations, conditions, definitions, and exclusions of the Travelers Primary Policy. There may be additional policy terms, limitations, conditions, definitions, and exclusions that operate to bar or limit coverage for some or all of the amounts for which Plaintiff seeks coverage and of which Travelers is presently unaware. Further, Travelers may have additional defenses that cannot now be articulated due to insufficient knowledge or information. Travelers therefore fully reserves its right to amend its Answer and to assert additional defenses as become known upon further investigation and discovery.

WHEREFORE, Travelers requests that Plaintiff take nothing on its claims, that all costs be taxed against Plaintiff, and that Travelers have such other and further relief to which it may be entitled.

Respectfully submitted,

**TRAVELERS CASUALTY AND SURETY
COMPANY OF AMERICA**

By: /s/ Daniel E. Tranen
One of its attorneys

Daniel E. Tranen, Esq.
ARDC # 06244878
WILSON ELSER MOSKOWITZ
EDELMAN & DICKER LLP
101 West Vandalia Street, Suite 220
Edwardsville, Illinois 62025
(618) 307-4895
Email: daniel.tranen@wilsonelser.com

**ATTORNEYS FOR DEFENDANT
TRAVELERS CASUALTY AND
SURETY COMPANY OF AMERICA**

CERTIFICATE OF SERVICE

I do hereby certify that on January 30, 2017, a true and correct copy of the foregoing was served by electronic transmission via the Court's CM/ECF system upon all parties registered to receive electronic notice in this case.

By: /s/ Daniel E. Tranen
Daniel Tranen