

## Federal District Court Holds that Policy Is Not Canceled Even Though "Coverage Ceases"

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Applying Kansas law, the United States District Court for the District of Kansas has held that, although a directors and officers liability policy provided that coverage "cease[s]" under the policy when a regulator is appointed to take over the insured bank, the policy itself does not effectively terminate or otherwise cancel as a result of such an appointment and, accordingly, insureds may report covered claims until the expiration date of the policy. *Columbian Fin. Corp. v. BancInsure, Inc.*, No. 08-2642-CM (D. Kan. Nov. 30, 2009).

The insurer issued a D&O policy to a bank that ultimately ceased active banking and stopped accepting deposits on August 22, 2008, during the policy period. The bank was declared insolvent and the Federal Deposit Insurance Corporation (FDIC) was appointed as its receiver on that same date. Within 30 days after appointment of the receiver, the FDIC, on behalf of the insured bank, provided written notice of circumstances that could give rise to potential claims against former officers and directors of the bank. The insurer asserted that the appointment of the receiver automatically canceled and terminated the policy, and the parent company of the bank—an insured under the policy—subsequently initiated a declaratory judgment action seeking a declaration that covered claims could be reported any time prior to the expiration date of the policy.

The court first noted the policy's "Cessation of Business" provision, which provided that if "the Company shall cease to engage in an active banking business or cease to accept deposits for any reason, coverage shall cease as of the date of the cessation of such business. . . ." To the court, the key question raised by this provision was whether "coverage shall cease" means the same thing as "the policy automatically canceled" or "the policy effectively terminated." The court answered this question by noting that the policy provides for two specific situations when the "policy may be canceled." According to the court, the policy's use of different terminology demonstrates that "coverage shall cease" does not mean the policy is canceled or terminated.

Additionally, the court stated that the presence of an endorsement that deleted an exclusion that would have otherwise precluded coverage for any legal actions brought by receivers indicated that it was not the parties' intent to terminate coverage upon appointment of a receiver. The court opined that terminating the policy upon appointment of a receiver would render the endorsement meaningless. Accordingly, the court determined that the policy's language unambiguously required that, while coverage ceased upon the appointment of the receiver, the policy itself remained in effect until the cessation of the policy period, and

claims could be reported until that date.