

Nonprofit Management Liability Policy Does Not Afford Coverage for Reimbursement of Stolen Social Security Benefits

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Applying South Carolina law, a federal court has found that amounts required to be repaid to the U.S. Social Security Administration (SSA) pursuant to the insured entity's contract to serve as a representative payee did not constitute covered loss under a nonprofit management liability policy. *Family Assistance Management Services v. Beazley Ins. Co.*, No. 2:13-cv-1142 (D.S.C. Nov. 5, 2013). Wiley Rein represented the insurer.

A former director of the insured, a nonprofit organization that operated as a representative payee for Social Security beneficiaries, admitted to embezzling beneficiary funds. As a result, the SSA required that the insured repay to it the embezzled funds that had been entrusted to the insured's care. The insured made a claim for coverage under its crime policy, and the crime insurer paid out the full limit of liability of that policy. The insured then requested that its management liability insurer pay the remaining amount due to the SSA. The management liability insurer denied coverage because, among other reasons, the amounts demanded by the SSA did not constitute covered "loss" within the meaning of the policy. Specifically, as defined, the term did not include "amounts owed under an express written contract."

In the coverage litigation that followed, the court granted the insurer's motion for summary judgment. In doing so, the court highlighted the fact that the application that the insured signed in each instance that it sought to be a representative payee provided that the insured agreed "to reimburse the amount of loss suffered by any beneficiary due to the misuse of funds by me/my organization." The court found that because the former director was acting in her capacity as an employee when she embezzled the beneficiaries' funds, the organization was accountable for the misuse. The court then reasoned that the SSA's demand for repayment cannot be construed as a claim in tort because the beneficiaries do not have statutory authority to file suit against a representative payee like the insured. Thus, according to the court, the SSA's claim for repayment was made pursuant to an express written contract—namely, the applications signed by the insured. On this basis, the court concluded that the amounts owed to the SSA did not constitute "loss" under the policy.