

Former Employee Not an “Insured Member”

May 2014

The United States District Court for the District of Columbia has held that a former employee was not an “Insured Member” under District of Columbia law. *Silver v. Am. Safety Indem. Co.*, 2014 WL 1233034 (D.D.C. Mar. 26, 2014).

The insurer issued a Federal Employee Professional Liability Policy (the Policy) to a federal employee for the policy period March 11, 2011 to March 11, 2012. The Policy afforded coverage for administrative and criminal claims against “Insured Members,” a term that was defined as “any full or part time civilian federal employee.” The coverage ceased when the “Insured Member” no longer met the definition of “Insured Member” (Condition B). In October 2011, the employee left his position at the federal government. In November 2011, the FBI requested to interview the employee regarding his conduct while employed at the federal government. On or about December 20, 2011, the employee gave notice to the insurer. The insurer denied coverage on the grounds that the employee's resignation from government employment in October 2011—before he became involved in any disciplinary proceedings or criminal proceedings—rendered him ineligible for coverage under the criminal section of the Policy.

The court agreed with the insurer's argument that, read together, Condition B and the definition of “Insured Member” unambiguously state that coverage under the administrative claims section of the Policy ends when an individual ceases to be a federal employee. In doing so, the court rejected the employee's argument that Condition B should be interpreted to bar coverage only for prospective acts that occur after the former employee leaves government service, finding such an interpretation inconsistent with the coverage grant that extends coverage solely to acts undertaken in an Insured Member's capacity as a federal employee.

The employee also contended that the insurer's interpretation of Condition B would render coverage illusory because it would preclude coverage for covered claims made after the employee left government employment but before the expiration of the policy period. The court disagreed, finding ample examples of coverage afforded under the Policy.