

# Court Holds Professional Services Exclusion Does Not Preclude Coverage for Engineers' Negligent Misrepresentation of Structure's Pre-Collapse Stability

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January 2007

A New Jersey appellate court has held that a professional services exclusion does not preclude coverage for damages resulting from an engineering and construction company's failure to warn the owners and users of a pier that the structure was in imminent danger of collapse. *S.T. Hudson Eng'rs, Inc. v. Penn. Nat'l Mut. Cas. Co.*, 909 A.2d 1156 (N.J. Super. Ct. App. Div. Nov. 16, 2006).

Prior to the collapse of the pier, which was home to a nightclub and restaurant, the engineering company had undertaken efforts to reinforce the structure and performed several inspections, the last of which revealed that the pier was critically unstable. The plaintiffs in the underlying actions alleged that the company's failure to warn of the dangerous and defective condition of the pier constituted a negligent misrepresentation.

The insurer, which had issued a comprehensive general liability policy and commercial umbrella policy to the company, argued that the alleged negligent conduct fell within the policies' professional services exclusion for damages "arising out of the rendering of or failure to render any professional services." The court disagreed, finding that coverage was provided under the policies' products-completed operations coverage, which covered the failure to provide warnings. The court also determined that the products-completed operations coverage was not subject to the professional services exclusion because the coverage did not stem from the rendering or failure to render actual professional services, but from the giving or failure to give information. The court then observed that, even if the policy had not provided coverage for completed operations, the professional services exclusion still would not have defeated coverage because the duty to provide information about a known danger resulting from negligence exists independent of the performance of any professional services.