

Professional Services Exclusion Applies Where Construction Supervisor Should Have Drawn Upon Knowledge, Experience or Training

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The Georgia Court of Appeals, applying Georgia law, has reversed judgments against issuers of business insurance policies, holding that the policies' professional services exclusions applied to a personal injury action arising out of the insured construction supervisor's failure correctly to identify whether damaged electrical conduits contained live wires and related allegations against the construction manager of the site. *Auto-Owners Ins. Co. v. State Farm Fire and Cas. Co.*, 678 S.E.2d 196 (Ga. Ct. App. May 12, 2009).

The underlying personal injury action arose out of a utility worker's injuries caused by the insured construction supervisor's incorrect assurance that electrical conduits to be repaired by the worker did not contain live wires. The worker sued the construction manager for the project as well as the construction supervisor who allegedly made the error and his company. The policies at issue each contained an exclusion barring coverage for bodily injury and/or personal injury "due to rendering or failing to render any professional service." Neither policy defined "professional service." Nevertheless, the court found the policies' similar professional services exclusions were unambiguous and precluded coverage.

The court held that the allegations against the construction manager related to failures to properly manage, inspect and supervise the work conducted at the project pursuant to its agreement. Therefore, the allegations clearly fell within the professional services exclusion. The court reasoned similarly that the allegations against the supervisor were not merely acts of negligence but were due to rendering or failing to render professional services. The court emphasized that ordinary acts do not become professional services merely because they are performed by a professional. To constitute professional services, "[t]he task must arise out of the acts specific to the individual's specialized knowledge or training." The court explained that "whether or not [the construction supervisor] drew upon his professional knowledge, experience, and training is not the proper inquiry; the proper inquiry is whether he should have drawn upon that knowledge, experience, and training." The court held that the supervisor was hired to supervise the construction site and that the injury at issue was caused by his failure to perform the very supervisory function for which his specialized knowledge was sought. Therefore, his assurance that no danger existed or his failure to correctly identify from blueprints whether each damaged conduit contained live wires "clearly fall within the definition of 'professional services.'" Accordingly, the court held that coverage for the underlying personal injury action was barred by the professional services

exclusions of the relevant policies and that the insurers had no duty to defend or indemnify.