

Professional Services Exclusions Bar Claims Against Architect Arising Out of Garage Collapse

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Applying New Jersey law, the United States Court of Appeals for the Third Circuit has determined that commercial liability insurers had no duty to defend actions filed against an insured architectural firm following the collapse of a parking garage it designed, holding that the claims were barred by professional services exclusions. *Kimberly Allison Tong & Goo, Inc. v. Travelers Property Cas. Com. of Am.*, 2009 WL 3838286 (3d Cir. Nov. 18, 2009).

Parties allegedly injured as a result of the collapse alleged that the architectural firm failed to design properly the garage, deviated from the standard of care expected of architects, and were otherwise negligent and careless. Based on these allegations, the underlying plaintiffs brought counts for interference with the use and enjoyment of property, loss of consortium, wrongful death, wrongful death-survivorship, and bystanders' emotional distress.

The commercial liability and excess commercial liability policies issued to the insured excluded coverage for "bodily injury," "property damage," "personal injury" or "advertising injury" arising out of the rendering of or failure to render any professional services. The insured conceded that these professional services exclusions applied to the underlying allegations of professional malpractice but contended that the insurers nevertheless had a duty to defend the underlying actions because the plaintiffs also alleged general negligence and personal injury, wrongful death, public and private nuisance, bystander emotional distress, and loss of consortium. The court noted, however, that the insured's only involvement with the garage collapse was its performance as an architectural services firm pursuant to an owner-architect agreement. Accordingly, the court concluded that because all of the underlying allegations arose out of the performance of professional services as an architect, which were barred by the policies' professional services exclusions, the insurers had no duty to defend.