

California Court Enforces Professional Services Exclusion

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A California court has held that a professional services exclusion is enforceable as applied to a suit arising out of staffing services. *Newport Harbor Lutheran Church v. Fed. Ins. Co.*, 2013 WL 30564 (Cal. Ct. App. Jan. 3, 2013).

The policyholder staffing agency purchased a commercial general liability policy but expressly declined to purchase additional “staffing errors and omissions” coverage. The policy contained a limited professional services exclusion with a staffing-related carveback, as well as an endorsement that excluded all professional services without exception.

The underlying claimant sued the staffing agency after the agency recommended that the claimant hire as an office manager an individual who had a criminal record and who subsequently embezzled approximately \$400,000 from the claimant. After the carrier declined coverage, the agency settled with the claimant by assigning its rights under the policy.

The claimant, standing in the shoes of the policyholder, argued that the conflict between the policy form and the endorsement created an ambiguity. The court disagreed, noting that well-established California law provides that endorsements control over policy forms. The court further noted that even if ambiguity existed, the insured's express decision not to purchase the professional services coverage would resolve the ambiguity in the carrier's favor. The court, relying on California precedent, further rejected an argument that the term “professional services” was innately ambiguous such that it could be limited to actions of licensed professionals. Accordingly, the court affirmed the trial court's grant of summary judgment to the insurer.