

Court Upholds Application of Professional Services Exclusions

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The Court of Appeals of Wisconsin, applying Wisconsin law, has held that the professional service exclusions in several liability policies precluded coverage for allegations that a realty company and one of its brokers failed to disclose information about mold contamination at a house purchased through the realty company. *Eddy v. B.S.T.V., Inc.*, 2005 WL 524950 (Wis. Ct. App. Mar. 8, 2005).

Two insurers issued liability policies to a realty company. The policies contained "professional services exclusions" precluding coverage for bodily injury, property damage or personal injury due to the company's "rendering or failure to render any professional services," including services as a "real estate agent." Two homebuyers sued the realty company alleging that the company and one of its brokers knew, or should have known, about mold contamination at the house they purchased but did not disclose this information prior to the sale. Because the complaint contained one allegation that the company's brokers had received training in identifying mold contamination and were obliged to disclose any such contamination under Wisconsin law, the insurers contended that their respective professional services exclusions barred coverage.

The appellate court agreed with the insurers, concluding that the exclusion applied because "the sale to [the buyers] of the contaminated home was in the course of [the company's] 'rendering . . . professional services' as real estate agents." In reaching this conclusion, the court rejected the company's assertion that the allegations in the underlying complaint relating to the brokers' training and duties under Wisconsin law "posits a duty that extends beyond their rendering professional services as real estate agents." Although the court noted that the term "'professional services' does not include all forms of a professional's conduct," the court found that the exclusion applied because the cited allegations were based on the premise that the insureds were "being sued precisely because of what they did or did not do *qua* real estate professionals."

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