

Breach of Contract Claim for "Failure to Adhere to Professional Standards" Covered

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A Wisconsin intermediate appellate court has found that a breach of contract claim based on negligent conduct is covered by a professional liability policy because it was "essentially a claim of failure to adhere to professional standards." *1325 North Van Buren, LLC v. T-3 Group Ltd. Westport Ins. Corp.*, 2005 WL 1208498 (Wis. Ct. App. May 17, 2005).

An insurer issued a professional liability policy to a company that provided construction management services. The policy covered "'loss' . . . which any insured becomes legally obligated to pay as a result of 'claims' first made against any insured during the 'policy period' . . . by reason of any 'wrongful act.'" The policy defined "wrongful act" as "any actual or alleged negligent act, error or omission in the performance of 'professional services' for others by an insured." "Professional services" was defined to include "those services that an insured is legally qualified to perform for others in the insured's practice as [a] . . . construction manager."

The owner of the building sued the company alleging various causes of action for negligence and breach of contract arising out of a renovation project. The insurer argued that its policy did not afford coverage for the breach of contract counts in the complaint.

The appellate court rejected the insurer's argument that breach of contract claims are not covered and focused on the nature of the allegations. Specifically, the court explained that "this is essentially a claim of failure to adhere to professional standards, sounding in negligence, but arising in the context of a contract." The court found that, under Wisconsin law, the policyholder had a duty of care and that the contract "merely furnished the occasion for the fulfillment of that duty."

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