

Breach of Contract Arising from Negligent Act, Error or Omission May Fall Within Insuring Agreement of Professional Liability Policy

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The Wisconsin Supreme Court, applying Wisconsin law, has held that a breach of contract claim may fall within the insuring agreement of a professional liability policy if the claim arises from alleged negligent acts, errors or omissions of the insured. *1325 North Van Buren, LLC v. T-3 Group, Ltd.*, 2006 WL 1889961 (Wis. July 11, 2006).

The insured company was a general contractor hired to convert a warehouse into condominium units. The company was insured under a professional liability policy for "all '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."

After numerous accidents and setbacks, the property owner fired the general contractor and filed suit, alleging liability based on both tort and breach of contract. The property owner also sued the company's professional liability insurer.

The Wisconsin Supreme Court held that the property owner's breach of contract claim fit within the insuring agreement of the professional liability policy because "it is based on a 'negligent act, error or omission' of [the company] in its failure to adhere to professional standards, sounding in negligence, but arising in the context of a contract." Relying on *American Family Mutual Insurance Co. v. American Girl, Inc.*, 673 N.W.2d 65 (Wis. 2004), the court noted that insurance coverage depends on the policy language, not the theory of liability alleged. The court reasoned that, under the policy language, a "wrongful act" required only an alleged negligent act, not a claim of negligence. The court stated that "[i]t is entirely possible that one could do a negligent act, which would form the basis for a breach of contract claim." The court further explained that an exclusion for claims arising out of "express warranties and guarantees" and another limiting coverage for contract indemnity would be superfluous if the policy could never afford coverage for breach of contract claims. Accordingly, the court concluded that the property owner's breach of contract claim, which alleged that its damages were caused by the company's "negligent errors and omissions," alleged a "wrongful act" within the insuring agreement of the policy.