

ALERT

Professional Services Exclusion Precludes Coverage for Design Defect Claims

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Applying Nevada law, a federal district court held that an insurer has no duty to defend or indemnify claims alleging damage from design defects in houses constructed by the insureds due to the policy's professional services exclusion. *St. Paul Fire & Marine Ins. Co. v. Del Webb Communities, Inc.*, 2013 WL 1181904 (D. Nev. Mar. 19, 2013).

The insured construction companies were named as defendants in a class action lawsuit alleging damages as a result of structural seismic design defects in houses. The insureds tendered the lawsuit for defense and indemnity coverage under an excess policy issued by the insurer. The excess policy contained a professional services exclusion precluding coverage for damage "that results from the performance of or failure to perform architect, engineer, or surveyor professional services" including "the preparation or approval of any drawing and specification, map, opinion, report, or survey, or any change order, field order, or shop drawing; and any architectural, engineering, inspection, or supervisory activity." The insurer accepted a defense subject to a reservation of rights, and filed a declaratory judgment action seeking a determination that no defense or indemnity obligation existed under the excess policy pursuant to the exclusion.

The court held that coverage was precluded by the plain terms of the professional services exclusion in the excess policy. According to the court, the only damages sought in the class action lawsuit were "damages relating to curing the design defect" that fell directly within the scope of the exclusion. In so holding, the court rejected the insureds' contention that additional discovery was warranted to determine if a concurrent cause for the damages existed that would defeat application of the exclusion. The court noted that the insureds

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“cannot show that there was a concurrent cause which would defeat the Exclusion because the only allegation in the [underlying action] is that homes were built using the allegedly defective [designs] and are hazardous because they do not meet seismic codes.” As such, the court rejected the insureds’ request for further discovery and held that no coverage obligations existed for the class action lawsuit under the excess policy.