

ALERT

Coverage for Architect's Alleged Negligence Barred by Professional Services Exclusion

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A federal district court has determined that a commercial general liability insurer had no duty under Nevada law to defend an underlying third-party contribution action against an insured architectural firm following a traffic accident allegedly caused by a median it designed, holding that the claim was barred by a professional services exclusion. *Beazley Ins. Co. v. Am. Econ. Ins. Co.*, 2013 WL 2245901 (D. Nev. May 21, 2013).

After suffering injuries in a car accident, a passenger filed suit against a driver of another vehicle. In the same action, a project developer filed a third-party complaint against the architectural firm, asserting a claim for professional negligence. The architectural firm tendered its claim to its professional liability insurer and its commercial general liability insurer. The professional liability insurer undertook the architectural firm's defense. The commercial general liability insurer also paid a portion of certain defense costs subject to a reservation of the right to decline coverage based on a professional services exclusion barring coverage for bodily injury or property damage claims "arising out of the rendering or failure to render any professional services by [the policyholder] or any engineer, architect or surveyor ... either employed by [the policyholder] or performing work on [the policyholder's] behalf" After the developer's claim was dismissed, the professional liability insurer sought contribution from the commercial general liability insurer.

The court held that, because the professional services exclusion precluded coverage, the commercial general liability insurer had no duty to defend the insured. First, the court rejected the professional liability insurer's contention that the duty to defend should be

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determined by reference to the underlying complaint by the accident victim (which did not name the insured), as well as the third-party complaint by the developer against the insured at issue. The court ruled that because the third-party complaint "specifically limits the type of conduct for which [the insured] may be liable," and because the CGL insurer's duty to defend extends only to "a lawsuit that alleges damages against the insured," the third-party complaint alone furnished the relevant allegations.

Next, the court rejected the professional liability insurer's argument that the professional services exclusion was inapplicable because the third-party complaint, asserting that the policyholder "failed to catch [an] open and obvious danger of [a] misaligned median in violation of its contractual duty," alleged ordinary negligence outside the ambit of a professional services exclusion. In analyzing the allegations of the third-party complaint, the court examined "the nature of the particular service allegedly negligently performed (or not performed), and whether that service is recognized as requiring specialized training or expertise." The court held that conduct, such as that alleged in the third-party complaint, within the scope of the contract between the insured and client constitutes professional services. The court determined that the "ordinary negligence" exception to application of professional services exclusions only applied where the insured was alleged to have engaged in wrongful conduct outside the scope of services for which the insured was hired. The court concluded that the allegations of the third-party complaint pertained solely to the architect's alleged "contractual duty to warn [its client] of defects and deficiencies and that [the insured]'s failure to perform this professional service resulted in damage to the plaintiff."