

Court Addresses Standard for “Professional Services” Exclusion

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In an unreported decision, the Appellate Division of the Superior Court of New Jersey has held that a "professional services" exclusion in a company's general liability policy did not apply to a lawsuit arising out of the acts or omissions of the company's "safety manager" because the manager "was neither 'a person authorized by law to practice a recognized profession' which is 'regulated by law'" nor did he provide services "involv[ing] knowledge of an advanced type in a field of learning acquired by a prolonged formal course of specialized instruction." *Lane v. Tishman Constr. Corp. of N.J.*, 2007 WL 1062182 (N.J. Super. Ct. App. Div. Apr. 11, 2007).

The safety consulting company was sued by a worker injured at a construction job because of the acts or omissions of the company's "safety manager" on site. The company had a general liability policy with a "professional services" exclusion, but the policy did not define the term "professional services." According to the policy's declarations page, the company was classified as a "consulting engineer" and the company's "safety engineer" was covered by other professional liability insurance.

Citing the definition of "professional services" used in the New Jersey statutes, the appellate court rejected the liability insurer's assertion that the professional services exclusion applied because: (1) the safety manager "did not hold a degree in engineering or architecture"; (2) he had not "engage[d] in any prolonged formal course of training"; and (3) his training was "more akin to general academic instruction, training and apprenticeship . . . rather than a professional who is paid a fee for his specialized service." The court also found that a reasonable insured reading the declarations page "would conclude that engineers, not non-degree managers" would be covered by the professional liability policy.