

Fifth Circuit Holds Professional Services Exclusion Bars Coverage for Oil Well Blowout Claim

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Applying Texas law, the United States Court of Appeals for the Fifth Circuit has held that a lawsuit alleging failure to adequately carry out drilling operations was barred by a general liability insurance policy's professional services exclusion. *Admiral Ins. Co. v. Ford*, 2010 WL 2026699 (5th Cir. May 21, 2010). The court also reversed the district court's conclusion that the professional services exclusion was illusory because it allegedly defined professional services to encompass "all operations of the insured."

An oil company hired the insured to plan an oil well and to consult and assist in the drilling of the well. The well experienced a "blowout" during the drilling. Following the blowout, the oil company sued the insured. The insurer paid the maximum \$50,000 per claim limit of the insured's professional liability policy and simultaneously filed a declaratory judgment action contending, *inter alia*, that the insured's general liability policy did not provide coverage on the basis of the professional services exclusion. The exclusion specified that, "[w]ith respect to any professional services shown in the Schedule, this insurance does not apply to 'bodily injury,' 'property damage,' 'personal injury,' or 'advertising injury' due to the rendering or failure to render any professional service." The schedule of professional services listed "ALL OPERATIONS OF THE INSURED."

In the resulting coverage litigation, the insurer contended that the "all operations" language simply meant that the parties intended to apply the legal definition of professional services to exclude coverage for professional services in any of the insured's operations. The district court rejected this argument, concluding that Texas law prohibited the court from supplying a legal definition of "professional services" when the term is not defined in the policy. Accordingly, the district court concluded that the professional services exclusion could not be applied because, if it was applied without limit to "all operations of the insured," the policy's coverage would be illusory. On appeal, the appellate court rejected this conclusion. The court held that, when a policy does not define "professional services," the court may apply a legal definition of the term. The court noted that Texas courts define "professional services" to include tasks that arise out of acts particular to the individual's specialized vocation and that involve use of the individual's specialized knowledge or training. Here, the court concluded that the blowout lawsuit implicated the professional services exclusion because the lawsuit alleged that the insured failed to properly utilize its specialized knowledge and training in designing and carrying out

the oil well project.