

Professional Services Exclusion Bars Coverage for Claim Arising Out of Sale of Property

November 2006

A Wisconsin intermediate appellate court, applying Wisconsin law, has held that coverage for the policyholders' liability arising out of the sale of property was precluded by the professional services exclusion in a realty company's business-owner's and umbrella liability policies. *Marina Road, LLC v. Zennett Properties, LLC*, 2006 WL 2670963 (Wis. Ct. App. Sept. 19, 2006).

After a limited liability property company sold an apartment complex to another property company, the buyer brought a breach of contract suit against the seller, the seller's members and the realty company that brokered the deal. It alleged that the apartment complex had long-term water leaks and was infested with toxic mold. Each of the defendants tendered the lawsuit to its respective liability insurers for a defense. The insurers denied coverage on various grounds.

In the ensuing coverage litigation, the court held that the professional service exclusions in the realty company's business-owner's and umbrella liability policies, which excluded coverage for liability arising out of the "rendering or failure to render any professional service," barred coverage. According to the court, under *Eddy v. B.S.T.V., Inc.*, 280 Wis. 2d 508, 696 N.W.2d 265 (2005), professional services exclusions apply where "there was a causal relationship between the alleged harm and the complained-of professional act." Although the exclusions did not specifically refer to real estate agents, "a reasonable insured would read the... language in the exclusion as including real estate agents when they are acting in their professional capacity."