

ALERT

# Settlement of Underlying Suit Precluded Determination That Professional Services Exclusion Applied as a Matter of Law

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A federal district court in New York has held, among other things, that an insurer failed to establish as a matter of law that a professional services exclusion in a commercial general liability policy applied to bar coverage because there remained a factual dispute regarding whether the property damage at issue was “due to” such services. *Lumbermens Mutual Casualty Co. v. Flow International Corp., et al.*, 2012 WL 527683 (N.D.N.Y. Feb. 17, 2012).

The exclusion at issue barred coverage for any claim for bodily injury, property damage, personal injury or advertising injury “due to the rendering or failure to render any professional service.” The insured, an engineering company, sought coverage for a wrongful death action arising out of an explosion at a steel plant, which allegedly resulted from defective equipment designed and manufactured by the insured. The court agreed with the insurer’s position that the alleged conduct constituted “professional services” within the scope of the exclusion, in that the engineering activities complained of “undoubtedly required[d] specialized knowledge.” The court, however, determined that it could not hold as a matter of law that the exclusion applied because there was a factual question as to whether the injury complained of in the underlying claim was “due to” the rendering or failure to render such services by the insured engineering company. In this regard, the court pointed out that the underlying claim had been settled without any finding as to the cause of the explosion or an admission of liability.

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