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General Liability Insurance:

Professional Services Exclusions

Claims professionals are frequently required to evaluate claims that require consideration of a professional services exclusion. Such exclusions typically read something like the following: “Losses not covered: bodily injury or property damage due to the providing of, or failure to provide, any professional service.”

In California, courts have interpreted these exclusions broadly, particularly with regard to the specific term “professional services.” Notably, courts have concluded that “professional” is not limited to the traditional professions such as law, medicine or any others that require special licensing. Rather, they have focused on whether the service is offered in exchange for payment.

This newsletter will provide an overview of case law that interprets the professional services exclusion, and give examples of what types of losses it excludes.

For instance, one case involved an insured whose customer was injured by defective-ear piercing services provided by the insured’s cosmetics store. The court found that ear piercing was in fact a professional service and that the loss was therefore excluded from coverage.

The insured had argued a narrow definition of “profession,” namely that a profession was limited to “a calling requiring specialized knowledge and often long and intensive academic preparation.” The court rejected this definition and concluded that the term “professional services” means “an activity done for remuneration as distinguished from a mere pastime.”

In reaching its broad definition of “professional services,” the court listed three factors which should be considered in determining the meaning of “professional services.” The first factor is the plain or usual meaning of the term “professional services.” The second factor is the context of the policy as whole, in particular the identity of the insured and the nature of its operations. And the third factor is the circumstances surrounding the issuance of the policy. Specific facts such as the cost of the policy and the cause of the loss will likely be considered within the context of these three factors.

In another case, the insured escrow services provider was sued by a prospective homebuyer for failure to close an escrow and cause the buyer to lose the home she intended to buy. The court followed prior

California decisions, and used a broad definition of “professional services” to conclude that the loss was excluded. Specifically, the court analyzed the cause of the loss and rejected an argument that there must be a direct cause, because “courts have held numerous circumstances fall within the exclusion for professional services... with the *unifying factor* being whether the injury occurred during the performance of the professional services.”

The broad interpretation of professional services exclusions is not new to California law. Even early decisions indicate the breadth of the exclusion.

For example, where a falling heat lamp injured a chiropractic patient during his treatment, the court held that the professional services exclusion in the chiropractor’s policy excluded this loss from coverage. The court reasoned that the exclusion applies if the injury occurs “within the performance of professional services.” Since the chiropractor was required to adjust the lamp in the course of treating his patients, the court concluded that the injury did take place in the course of providing professional services.



Another early decision indicates that a loss may be excluded even when someone other than the insured contributes to the loss. In this case, the insured performed an abortion on the wrong patient due to a mistaken identification by the insured's nurse. The court concluded that the loss was excluded by the professional services exclusion, because "the ultimate and unassailable fact is that... the injury caused to [the patient] occurred during, and as a direct result of the performance of professional services."

In conclusion, the term "professional services" has been held to include any activity engaged in for payment, as distinguished from mere pastimes. It is not limited to those professions that have particular academic or licensing requirements.

If you have any further questions, Bolender & Associates has available a detailed written analysis of the case law summarized above. Please call or email Jeffrey S. Bolender for a free copy at:
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