

ALERT

Alleged Supervisory Role Not Sufficient to Relieve Insurer of Duty to Defend Pursuant to Professional Services Exclusion

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The United States District Court for the District of Connecticut has held that allegations that insureds undertook a supervisory role with respect to the renovation of an apartment building they owned did not implicate the policy's professional services exclusion so as to relieve the insurer of its duty to defend. *Vermont Mut. Ins. Co. v. Ciccone*, 2012 WL 5199688 (D. Conn. Oct. 22, 2012).

In 2008, a construction worker filed suit against an insured development company and its owner, also an insured, alleging injuries resulting from his fall from the roof of a building on which he was working. The suit alleged that the insureds owned the building and took a supervisory role in its renovation. The suit also alleged that the insureds were negligent in their selection of the independent contractor, the injured worker's alleged employer, for the job. The insureds tendered defense of the matter to their insurer under a commercial liability and business owner's policy. The insurer agreed to pay for the insureds' defense subject to a reservation of rights and, in 2009, filed an action against the insureds seeking a declaratory judgment that it had no duty to defend or indemnify them in the underlying action.

Ruling on the insureds' motion for partial summary judgment on the duty to defend, the court first held that it was limited under Connecticut law to an analysis of the allegations in the complaint and the policy. The court rejected the insurer's argument that while the "initial duty to defend" is determined only based on these two documents, other evidence properly could be considered in determining through a coverage action whether it had an "ongoing

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duty to defend.” According to the court, this distinction is inconsistent with Connecticut law. The court stated that, absent policy language to the contrary, “an insurer is obligated to defend its insured . . . even when it is privy to information that suggests that those allegations in the complaint that bring the injury within coverage are false.”

Considering the professional services exclusions in this light, the court held that the complaint’s allegations concerning the insureds’ supervisory role were insufficient to relieve the insurer of its duty to defend against the suit. The exclusion provided that damages for bodily injury “due to rendering or failure to render any professional service,” including “[s]upervisory, inspection or engineering services,” were excluded from coverage. The court focused on the use of the word “render,” which it found “is too readily and clearly understood to mean that services ought to be rendered to a party other than the insured” The court did “not find it at all convincing that a property owner could render his professional services to individuals working on his property for him, either directly or as employees of a subcontractor.”

In a similar fashion, the court also held that the policy’s employer’s liability exclusion did not relieve the insurer of its duty to defend. Having rejected the insurer’s reliance on facts outside the complaint, the court held that the complaint’s allegation that the claimant was the employee of an independent contractor, not the insured, was sufficient to trigger the duty to defend.

The opinion is available [here](#).