

## 50 State Professional Liability Insurance Coverage Review<sup>1</sup>

Jurisdiction	Standard to Determine Professional Service	Professional Services Exclusion Applied	Professional Services Exclusion Not Applied	Cases Involving Coverage Under Professional Liability Policy
Alabama	<u>Penn. Nat’l Mut. Cas. Ins. Co. v. Roberts Brothers, Inc.</u> , 550 F. Supp. 2d 1295 (S.D. Ala. 2008) (professional service involves specialized knowledge, labor, skill or judgment)	<u>Tanner v. State Farm Fire &amp; Cas. Co.</u> , 874 So. 2d 1058 (Ala. 2003) (claims for intentional acts and accounting malpractice excluded by professional service exclusion in a case involving claims against business partner who also served as plaintiff’s accountant)	<u>Penn. Nat’l Mut. Cas. Ins. Co. v. Roberts Brothers, Inc.</u> , 550 F. Supp. 2d 1295 (S.D. Ala. 2008) (claims by tenant who was sexually assaulted due to failure of the property manager to repair the lock on tenant’s door were not excluded because failure to repair door was “administrative oversight” and a “clerical task” and did not involve any specialized knowledge, labor or skill)  <u>U.S. Fidelity &amp; Guar. Co. v. Armstrong</u> , 479 So. 2d 1164 (Ala. 1995) (professional service exclusion did not apply in case involving construction of sewer system project because there were “no allegations as to the rendering of or the failure to render professional services.”)	<u>Professional Asset Strategies v. Continental Cas. Co.</u> , 2010 U.S. Dist. LEXIS 115923 (N.D. Ala. Aug. 27, 2010) (holding that insured’s theft of client funds during his time as an investment adviser constituted the rendering of professional services)

<sup>1</sup> With a few exceptions, this review does not capture cases involving coverage under professional liability policies for situations when a health care provider engages in sexual activity with a patient. A comprehensive, state-wide summary of such cases can be found in the article “Coverage of Professional-Liability or - Indemnity Policy for Sexual Contact with Patients by Physicians, Surgeons, and Other Healers” by Christopher Vaeth, 60 A.L.R.5<sup>th</sup> 239 (2009).

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Alaska	<u>Am. Motorists Ins. Co. v. Republic Ins. Co.</u> , 830 P. 2d 785 (Alaska 1992) (professional services include acts arising out of a vocation, calling, occupation or employment involving specialized knowledge, labor or skill. In determining whether a particular act is a 'professional service' the court must look not to the title or character of the party performing the act but to the act itself)	<u>State of Alaska v. State Farm Fire &amp; Cas. Co.</u> , 939 P.2d 788 (Alaska 1997) (claims involving injuries sustained by claimant when he collided with a train of baggage carts at an airport were not precluded under professional services exclusion despite cause of action for negligent design absent any case law holding that the exclusion applies to services which an insured performs for itself which result in a dangerous condition)		<u>Am. Motorists Ins. Co. v. Republic Ins. Co.</u> , 830 P. 2d 785 (Alaska 1992) (architect's competitive bid for a contract to design a school building is a professional service because the bid was more than a price quote and included drawings, project approach, work schedule and other particulars that "only an architect using his or her specialized knowledge, labor and skill could have prepared.")
Arizona	<u>Aetna Cas. &amp; Sur. Co. v. Dannenfeldt</u> , 778 F. Supp. 484 (D. Ariz. 1991) (a professional act or service is one arising out of a vocation calling, occupation, or employment involving specialized knowledge, labor, or skill, and the labor or skill involved is predominantly mental or intellectual, rather than physical or manual. Court must not look to the title or character of the party performing the act but to the act itself)	<u>Aetna Cas. &amp; Sur. Co. v. Dannenfeldt</u> , 778 F. Supp. 484 (D. Ariz. 1991) (applying exclusion to sale and marketing of junk bonds)		<u>American Cas. Co. of Reading, Pa. v. Kemper</u> , 2008 U.S. Dist. LEXIS 54365 (D. Ariz. July 16, 2008) (finding that defamatory acts of rehabilitation counselor constituted professional services under healthcare provider professional liability policy because "the alleged defamatory acts are in fact intertwined with her professional services as a counsel")

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Arkansas	<u>Shelter Ins. Co. v. Hildreth</u> , 255 F.3d 921 (8 <sup>th</sup> Cir. 2001) (applying Arkansas law) (professional act or service is one arising out of a vocation, calling, occupation or employment involving specialized knowledge, labor, or skill and the labor or skill involved is predominantly mental or intellectual rather than physical or manual)	<u>Shelter Ins. Co. v. Hildreth</u> , 255 F.3d 921 (8 <sup>th</sup> Cir. 2001) (applying Arkansas law) (concluding that professional service exclusion in business policy precluded coverage for personal injury claim arising out of negligent neck and back treatment by a naprapath)		<u>Madden v. Humphrey</u> , 53 Ark. App. 250, 922 S.W.2d 731 (Ark. App. 1996) (holding that insurer had a duty to defend under a lawyers professional liability policy against claims alleging attorney forced clients into bankruptcy so he could take their real property)
California	<u>Tradewinds Escrow v. Truck Ins. Exch.</u> , 97 Cal. App. 4th 704, 118 Cal. Rptr. 561 (2002) (professional services are those arising out of a vocation, calling, occupation, or employment involving specialized knowledge, labor, or skill, and the labor or skill involved is predominantly mental or intellectual, rather than physical or manual)  <u>Hollingsworth v. Commercial Union Ins. Co.</u> , 208 Cal. App. 3d 800, 256 Cal. Rptr. 357 (1989) (in determining whether a particular act is of a professional nature or a professional service, the court must look not to the title or character of the party performing the act but to the act itself)	<u>Shepardson Engineering Assocs., Inc. v. The Continental Ins. Co.</u> , 1994 U.S. App. LEXIS 8875 (9 <sup>th</sup> Cir. Apr. 14, 1994) (coverage precluded for claim alleging property damage caused by plumbing leaks in apartment building and attributable to faulty construction and design of plumbing system by the insured)  <u>Stone v. Hartford Cas. Co.</u> , 470 F. Supp. 2d 1088 (C.D. Cal. 2006) (claim alleging injuries and damages against draftsman hired to construct a home addition and a new driveway precluded by exclusion because drafting and construction requires specialized intellectual knowledge, labor, and skill, and thus were non-covered “professional services”)	<u>Food Pro Internat., Inc. v. Farmers Ins. Exchange</u> , 169 Cal. App. 4th 976, 89 Cal. Rptr. 3d 1 (2008) (refusing to apply exclusion in a suit against the insured, an engineering consulting firm, for a personal injury claim by a construction worker for injuries sustained when he fell through the floor at the plant of the insured’s client because liability arose from the insured’s mere presence at the site, not out of the rendering or failure to render any professional services)	<u>PMI Mortg. Ins. Co. v. American Int’l Specialty Lines Ins. Co.</u> , 394 F.3d 761 (9 <sup>th</sup> Cir. 2005) (errors and omissions policy issued to a financial institution that sold mortgage guaranty insurance provided coverage for allegations it violated the anti-kickback provision of the RESPA and further violated RESPA by failing to disclose discounts insured gave lenders)  <u>Tana v. Professionals Prototype I Ins. Co.</u> , 47 Cal. App. 4th 1612, 55 Cal. Rptr.2d 160 (1996) (holding that commonsense reading of complaint against attorney reveals that the claim involved a fee dispute, not

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		<p><u>Tradewinds Escrow v. Truck Ins. Exch.</u>, 97 Cal. App. 4th 704, 118 Cal. Rptr. 561 (2002) (concluding that the claims alleged in the case- which involved the failing to close escrow on a home - fell within the professional services exclusion because the alleged wrongful acts were committed during the performance of professional services, namely, the rendering of escrow services)</p> <p><u>Hollingsworth v. Commercial Union Ins. Co.</u>, 208 Cal. App. 3d 800, 256 Cal. Rptr. 357 (1989) (applying exclusion to claim for injuries caused by ear piercing done by retail cosmetic store)</p>		<p>malpractice, which was clearly outside the scope of a malpractice policy)</p> <p><u>Certain Underwriters at Lloyd's v. Truck Ins. Co.</u>, 2005 Cal. App. Unpub. LEXIS 7407 (Aug. 17, 2005) (claim against insurance broker alleging negligence in preparation of experience rating reports to determine hospital malpractice premiums was covered under professional liability policy because collecting and processing experience rating reports was a professional activity not an administrative function)</p> <p><u>Wittmack v. Federal Ins. Co.</u>, 2005 Cal. App. Unpub. LEXIS 9357 (Oct. 15, 2005) (holding that an errors and omissions policy did not cover an interior designer's overcharging of her clients because pricing was an administrative task not requiring any design expertise)</p>

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Colorado	<p><u>Noyes Supervision, Inc. v. Canadian Indem. Co.</u>, 487 F. Supp. 433 (D. Colo. 1980) (professional services means work requiring knowledge of an advanced type in a field of learning or science customarily acquired by prolonged course of study of specialized intellectual instruction as distinguished from training in the performance of routine, manual, or physical processes)</p>	<p><u>Titan Indemnity Co. v. Travelers Prop. Cas. Co. of America</u>, 181 P.3d 303 (Colo. App. Ct. 2007) (concluding that exclusion applied to claim against company that processed medical bills on behalf of the insured because its denial of medical costs constituted “professional services” within the meaning of the policy)</p>	<p><u>Noyes Supervision, Inc. v. Canadian Indem. Co.</u>, 487 F. Supp. 433 (D. Colo. 1980) (holding that damage to gas well during well repairs was not precluded by exclusion because the employee was not a professional nor was he performing a professional service when the damage took place)</p>	<p><u>Certain Underwriters at Lloyd’s, London v. Health Care Mgmt Partners, Ltd.</u>, 2006 U.S. Dist. LEXIS 49498 (D. Colo. 2006) (ruling that claims relating to chronic understaffing and improper billing for services rendered do not involve the rendering of professional services under a Health Care Professional Liability policy)</p> <p><u>Cohen v. Empire Cas. Co.</u>, 771 P.2d 29 (Colo. App. Ct. 1989) (lawyers professional liability policy did not cover fees owed by insured attorney to another attorney held in assisting insured attorney’s client)</p>
Connecticut	<p><u>St. Paul Fire and Marine Ins. Co. v. Shernow</u>, 222 Conn. 823, 610 A.2d 1281 (1992) (professional act or service is one arising out of a vocation, calling, occupation or employment involving specialized knowledge, labor or skill and the labor or skill involved is predominantly mental or intellectual rather than physical or manual)</p>	<p><u>Nationwide Mut. Ins. Co. v. McHugh</u>, 2001 Conn. Super. LEXIS 3595 (Conn. Super. 2001) (finding that claim against professional real estate inspector for negligent failure to disclose problems with condominium exclusively involve professional services which were excluded under the policy)</p>		<p><u>St. Paul Fire and Marine Ins. Co. v. Shernow</u>, 222 Conn. 823, 610 A.2d 1281 (1992) (concluding that sexual assault by dentist in the course of treatment fell within professional liability coverage because the medically negligent procedure was so inextricably intertwined and inseparable from the intentional conduct that served as the basis for the sexual assaults claim)</p>

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				<p><u>Edmundson v. American Home Ass. Co.</u>, 1996 Conn. Super. LEXIS 1111 (Conn. Super. 1996) (finding that claims against an attorney for self-dealing and conducting business with client were violations of the professional code but did not constitute legal malpractice)</p>
Delaware		<p><u>Brosnahan Builders, Inc. v. Harleysville Mut. Ins. Co.</u>, 137 F. Supp. 2d 517 (D. Del. 2001) (claim against homebuilder for moisture damage to home constituted damage due to rendering or failure to render a professional service because insured failed to install the correct waterproofing materials)</p>		
District of Columbia		<p><u>Harbor Ins. Co. v. OMNI Constr., Inc.</u>, 912 F.2d 1520 (D.C. Cir. 1990) (precluding coverage for damage caused by contractor’s excavation work – non-professional activities – because the damage was caused by defective engineering work).</p>		<p><u>Continental Cas. Co. v. Cole</u>, 809 F.2d 891 (D.C. Cir. 1987) (breach of contract claim against attorney was covered under professional liability policy because the term “error” was not preceded by the word “negligent” and, thus, encompassed intentional, non-negligent claims for breach of contact)</p>

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Florida	<p><u>Harad v. Aetna Cas. &amp; Sur. Co.</u>, 839 F.2d 979 (3<sup>rd</sup> Cir. 1988);  <u>Vogelsang v. Allstate Ins. Co.</u>, 46 F. Supp. 2d 1319 (S.D. Fla. 1999) (professional act or service is one arising out of a vocation, calling, occupation, or employment involving specialized knowledge, labor, or skill, and the labor or skill involved is predominantly mental or intellectual, rather than physical or manual)</p>	<p><u>Alpha Therapeutic Corp. v. St. Paul Fire &amp; Marine Ins. Co.</u>, 890 F.2d 368 (11<sup>th</sup> Cir. 1989) (Florida law) (transposing of test results was excluded under a general liability policy with a professional service exclusion because the clerical work was a necessary part of the professional services rendered by plasma distributor)</p> <p><u>Atl. Marine Fla., LLC v. Evanston Ins. Co.</u>, 721 F. Supp. 2d 1244 (M.D. Fla. 2010) (claim against ship designer by wife of ship captain who was killed when watertight door closed on him were “unequivocally excluded” as the claims involved design specifications and engineering services).</p> <p><u>St. Paul Fire &amp; Marine Ins. Co. v. Med. Protective Co. of Ft. Wayne, Indiana</u>, 2006 U.S. Dist. LEXIS 89422 (M.D. Fla. 2006) <i>aff’d</i> 2007 U.S. App. LEXIS 28220 (11<sup>th</sup> Cir. Dec. 4, 2007) (injuries sustained when physicians were moving patient during a cardiac procedure “arose out of” professional services)</p> <p><u>American Motorists Ins. Co. v. Southern Security Life Ins. Co.</u>, 80 F. Supp.2d 1285 (M.D. Ala. 2000) (applying Florida</p>	<p><u>Evanston Ins. Co. v. Budget Group, Inc.</u>, 199 Fed. Appx. 867 (11<sup>th</sup> Cir. 2006) (Florida law) (renting vehicles to the public does not constitute a professional service)</p> <p><u>Aerothrust Corp. v. Sunshine Hoist &amp; Steel Erectors, Inc.</u>, 904 So. 2d 470 (Fla. 3d DCA. 2005) (inspection and maintenance of crane hoists is not a professional service within the meaning of a professional services exclusion)</p>	<p><u>St. Paul Fire &amp; Marine Ins. Co. v. Era Oxford Realty Co.</u>, 572 F.3d 893 (11<sup>th</sup> Cir. 2009) (Florida law) (insurer was not obligated under real estate broker and agent professional liability insurance policy to defend insured in fraud suit because policy covered losses resulting from professional services rendered by insured, and conduct at issue in underlying suit involved merger of insured’s business, which was not common business transaction unique to real estate agents)</p> <p><u>Appel v. Lexington Ins. Co.</u>, 29 So. 3d 377 (Fla. 5<sup>th</sup> DCA 2010) (negligence in failing to detect a fraudulent Ponzi scheme engineered by the company president does not fall within the definition of professional services)</p> <p><u>Roberts v. Florida. Lawyers Mut. Ins. Co.</u>, 839 So.2d 843 (Fla. 4<sup>th</sup> DCA 2003) (policy covering act, error or omission in the providing professional services did not apply to law</p>

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		law) (misrepresentations made during the purchase and payment of life insurance policies resulting in mental anguish arose from the performance of professional services)		partners' dispute over how to divide money from a lawsuit)
Georgia	<u>St. Paul Fire &amp; Marine Ins. Co. v. Alderman</u> , 216 Ga. App. 777, 455 S.E.2d 852 (1995) (something more than an act flowing from mere employment or vocation is essential, the act or service must be such as exacts the use or application of special learning or attainments of some kind)	<u>Auto-Owners Ins. Co. v. State Farm Fire and Cas. Co.</u> , 297 Ga. App. 751, 678 S.E.2d 196 (2009) (exclusion applied to preclude claims by worker injured while striking a live wire at a construction project because insured, in its capacity as construction supervisor, was tasked with possessing specialized knowledge of the site and claimant alleged that insured failed to properly manage and supervise the project)  <u>Nationwide Mut. Fire Ins. Co. v. City of Rome</u> , 268 Ga. App. 320, 601 S.E.2d 810 (2004) (failure of insured to prepare and submit applications for HUD grants in accordance with terms of agreements constituted a professional service)	<u>Cunningham v. Middle Ga. Mut. Ins. Co.</u> , 268 Ga. App. 181, 601 S.E.2d 382 (2004) (concluding that roofing is a trade or occupation, not a profession for purposes of a professional services exclusion)	<u>Garland, Samuel &amp; Loeb P.C. v. Am. Safety Ins. Co.</u> , 287 Ga. App. 254, 651 S.E.2d 177 (Ga. App. 2007) (claim for alleged breach of fee-shifting agreement was not covered under lawyers professional liability policy covering acts, errors, or omissions in the performance of professional services)
Hawaii	<u>Chicago Ins. Co. v. Griffen</u> , 817 S. Upp. 861 (D. Haw. 1993) (professional act or service is one arising out of a vocation, calling, occupation, or employment involving specialized knowledge,	<u>First Ins. Co. of Hawaii, Ltd. V. Cont'l Cas. Co.</u> , 466 F.2d 807 (9 <sup>th</sup> Cir. 1972) (Hawaii law) (exclusion applied to claim for damages caused to pipeline by insured providing engineering and supervisory services	<u>Federal Ins. Co. v. Hawaiian Elect. Industries, Inc.</u> , 1997 U.S. Dist. LEXIS 24129 (D. Haw. Dec. 23, 1997) (exclusion in D&O policy did not apply to bar coverage for all claims arising	<u>Chicago Ins. Co. v. Griffen</u> , 817 S. Upp. 861 (D. Haw. 1993) (claims arising out of attempt to cover up alleged fraudulent billing practices did not constitute the rendering of

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	labor, or skill, and the labor skill involved is predominantly mental or intellectual, rather than physical or manual)	in development of industrial park because damages caused by faulty plan or design)	from insured's failure to provide its subsidiary with funds to pay claim resulting from destruction caused by hurricane)	professional services under professional liability policy issued to psychologist)
Idaho	<u>Hirst v. St. Paul Fire and Marine Ins. Co.</u> , 106 Idaho 792, 683 P.2d 440 (Idaho Ct. App. 1984) (a professional act or service is one arising out of a vocation, calling, occupation, or employment involving specialized knowledge, labor, or skill, and the labor or skill involved is predominantly mental or intellectual, rather than physical or manual)		<u>Blue Cross of Idaho Health Serv. v. Atl. Mut. Ins. Co.</u> , 2011 U.S. Dist. LEXIS 4892 (D. Idaho Jan. 19, 2011) (exclusion did not apply to claim arising out of insured's credentialing services because the credentialing of physician providers is an activity ancillary to the main service provided by the insured)	<u>Hirst v. St. Paul Fire and Marine Ins. Co.</u> , 106 Idaho 792, 683 P.2d 440 (Idaho Ct. App. 1984) (claims alleging that doctor drugged and then sexual abused patient did not constitute professional services under physician's professional liability policy).
Illinois	<u>State Street Bank and Trust Co. v. INA Ins. Co.</u> , 207 Ill. App. 3d 961, 567 N.E.2d 42 (1991) (term is not limited to services performed by persons who must be licensed by a governmental authority to practice their profession but, rather, it refers to any business activity conducted by the insured which involves specialized knowledge, labor, or skill)	<u>Hurst-Rosche Engineers, Inc. v. Commercial Union Ins. Co.</u> , 51 F.3d 1336 (7 <sup>th</sup> Cir. 1995) (Illinois law) (claims for defamation and tortious interference with contract asserted against engineering firm hired to design and supervise construction of apartment arose out of rendition of professional services)  <u>Pekin Ins. Co. v. L.J. Shaw &amp; Co.</u> , 291 Ill. App. 3d 888, 684 N.E.2d 853 (Ill. App. 1997) (exclusion applied to misrepresentation claims against insurance claims negotiators relating to fire loss because the acts	<u>State Auto. Mut. Ins. Co. v. Habitat Constr. Co.</u> , 377 Ill. App. 3d 281, 875 N.E.2d 1159 (Ill. App. 2007) (although claim involved the failure to make reasonable inspection of the premises, improperly operating, managing, maintaining, and controlling the premises, and failing to supervise the work being done, the exclusion did not apply to the general contractor insured because it was not an architect, surveyor or engineer)	<u>Crum &amp; Forster Managers Corp. v. Resolution Trust Corp.</u> , 156 Ill. 2d 384, 620 N.E.2d 1073 (Ill. 1993) (no coverage under Real Estate Agents and Brokers Professional Liability Policy for claims alleging intentional business torts and engaged in unfair competitive practices because such risks are ancillary to, and not inherent in, the practice of the real estate profession).  <u>Cont'l Cas. Co. v. Donald T. Bertucci</u> ,

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		<p>drew upon (or should have drawn upon insured's professional training, skill, experience, or knowledge as insurance adjusters)</p> <p><u>Fidelity &amp; Cas. Co. v. Envirodyne Engineers, Inc.</u>, 122 Ill. App. 3d 301, 461 N.E.2d 471 (Ill. App. 1983) (applying exclusion to claim for negligent supervision and inspection of a construction site because insured was hired to perform the professional service as consulting engineer)</p>	<p><u>Bonnie Owen Realty v. Cincinnati Ins. Co.</u>, 283 Ill. App. 3d 812, 670 N.E.2d 1182 (Ill. App. 1996) (exclusion not applied to claims against real estate management company for negligence in the maintenance of the building and preventing fire)</p>	<p><u>Ltd.</u>, 399 Ill. App. 3d 775, 926 N.E.2d 823 (Ill. App. 2010) (no coverage under legal professional liability policy for claim that attorney retained an excessive fee in medical malpractice case)</p>
Indiana	<p><u>Erie Ins. Group v. Alliance Envtl. Inc.</u>, 921 F. Supp. 537 (S.D. Ind. 1996) (focus must be on whether the claimant is seeking to impose liability for acts which were taken in the course of providing professional services and which drew upon - or at least should have drawn upon - the professional's training, skill, experience or knowledge)</p> <p><u>Terre Haute First Nat'l Bank v. Pac. Employers Ins. Co.</u>, 634 N.E.2d 1336, 1339 n. 2 (Ind. Ct. App. 1993) (professional services involve specialized knowledge or skill, and are predominately mental</p>	<p><u>National Ben Franklin Ins. Co. v. Calumet Testing Servs.</u>, 60 F. Supp. 2d 837 (N.D. Ind. 1998) (claim for injuries sustained when tank inspected by the insured exploded excluded under the policy because the interpretation of the weld testing involved professional knowledge, experience, and training)</p> <p><u>Erie Ins. Group v. Alliance Environmental, Inc.</u>, 921 F. Supp. 537 (S.D. Ind. 1996) (claims for defamation and tortious interference with contract against corporation tasked with evaluating work performed by an asbestos removal company were precluded because statements at issue were</p>	<p><u>Gulf Ins. Co. v. Tilley</u>, 280 F. Supp. 60 (N.D. Ind. 1967) (exclusion did not apply to claim arising from injuries to a child under policy issued to housewife performing services as a baby sitter because no requirement that babysitting required, or that the insured possessed, any specialized skills or learning)</p>	

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	or intellectual as opposed to physical or manual in nature)	<p>reasonably related to the services provided and involved the use of professional experience, skill, judgment or knowledge)</p> <p><u>Terre Haute First Nat'l Bank v. Pacific Employers Ins. Co.</u>, 634 N.E.2d 1336 (Ind. Ct. App. 1993) (claim against bank for negligently acting as guardian was precluded by exclusion that excluded coverage for damages due to rendering or failure to render any professional service)</p>		
Iowa			<p><u>First Newton Nat'l Bank v. General Cas. Co.</u>, 426 N.W.2d 618 (Iowa 1988) (claims for negligent misrepresentation, arising out of insured's bank conduct in financing two distressed farms not excluded under professional liability exclusion in umbrella policy because the exclusion only precluded errors, omissions and did not preclude negligence claims)</p>	<p><u>Employers Reinsurance Corp. v. Mut. Medical Plans</u>, 504 N.W.2d 885 (Iowa 1993) (underlying suit alleging damages for tortious interference with contract and tortious interference with a prospective advantage not covered under insurance agent and broker's professional liability policy because the policy only covered negligent acts, errors, and omissions and the claimants alleged only intentional acts)</p>

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Kansas	<u>Emplrs. Reinsurance Corp. v. NewCap Ins. Co.</u> , 209 F. Supp. 2d 1184 (D. Kan. 2002) (professional service is one arising out of a vocation, calling, occupation, or employment involving specialized knowledge, labor, or skill, and the labor or skill involved is predominantly mental or intellectual, rather than physical or manual)			<u>Emplrs. Reinsurance Corp. v. NewCap Ins. Co.</u> , 209 F. Supp. 2d 1184 (D. Kan. 2002) (holding that hospital's "person down policy" which required security personnel to call 911 rather than bring patient to emergency room was an administrative business decision that applied only to security personnel and did not fit within the coverage of the hospital's professional liability policy)
Kentucky	<u>Monroe Guar. Ins. Co. v. TEE Eng'g Co.</u> , 2005 U.S. Dist. LEXIS 12691 (E.D. Ken. June 23, 2005) (professional services are those which require a license and/or higher education or special knowledge and training. If a job could be and in fact is rendered by a layman, it is inherently not a professional service)	<u>Ratliff v. Employers' Liab. Assurance Corp.</u> , 515 S.W.2d 225 (Ken. Ct. App. 1974) (holding the hospital's negligence was based upon the failure of nurses to recognize plaintiff's debilitated condition as a result of acute alcoholism, and any negligence on the part of the hospital was clearly a failure to render professional care)	<u>Monroe Guar. Ins. Co. v. TEE Eng'g Co.</u> , 2005 U.S. Dist. LEXIS 12691 (E.D. Ken. June 23, 2005) (concluding that only task performed by professional engineer was that of certifying maps generated from the other employees' services and, thus, only the certifications of certain features reflected on map could be construed as professional services)	
Louisiana	<u>Abramson v. Florida Gas Transmission Co.</u> , 908 F. Supp. 1389 (E.D. La. 1995) (professional services involve discretion acquired by special training and the	<u>Natural Gas Pipeline Co. of America v. Odum Offshore Surveys, Inc.</u> , 697 F. Supp. 921 (E.D. La. 1988) <i>aff'd</i> 889 F. 2d 633 (5 <sup>th</sup> Cir. 1989) (the actions of pipeline surveyor's employees in	<u>Abramson v. Florida Gas Transmission Co.</u> , 908 F. Supp. 1389 (E.D. La. 1995) (issues of fact preclude application of exclusion for damages caused during pipeline	

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	<p>exercise of professional judgment); <u>American Cas. Co. v. Hartford Ins. Co.</u>, 479 So. 2d 577 (La. Ct. App. 1985) (in determining whether a particular act is of a professional nature, the court looks not to the title of or the character of the party performing the act, but to the act itself)</p>	<p>directing dive vessel to designated anchor locations were professional services within the meaning of the exclusion)</p> <p><u>Womack v. Travlers Ins. Co.</u>, 251 So. 2d 463 (La. App. 1971) (exclusion applied because insured engineering firm was sued for failing to properly identify location of buried pipeline in relation to road construction project)</p>	<p>refurbishment)</p> <p><u>North American Treatment Sys., Inc. v. Scottsdale Ins. Co.</u>, 943 So. 2d 429 (La. Ct. App. 2006) (exclusion applied to indemnity obligations but not defense obligations for damage caused by project manager's subcontractor during construction and startup of wastewater treatment plant )</p> <p><u>Arnette v. NPC Serv., Inc.</u>, 808 So. 2d 798 (La. Ct. App. 2002) (finding that the term "professional duty" in professional liability exclusion was undefined and, hence, the exclusion was ambiguous)</p> <p><u>American Cas. Co. v. Hartford Ins. Co.</u>, 479 So. 2d 577 (La. Ct. App. 1985) (refusing to apply exclusion to claim against nurse for injuries sustained by a patient who fell from an examination table after following instructions from the nurse because such acts did not require the exercise of a professional skill but could be performed by any unskilled or untrained employee)</p>	

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Maine	<u>Western World Ins. Co. v. American and Foreign Ins. Co.</u> , 180 F. Supp 2d 224 (D. Maine 2002) (a professional act or service is one arising out of a vocation, calling, occupation, or employment involving specialized knowledge, labor, or skill, and the labor or skill involved is predominantly mental or intellectual, rather than physical or manual)	<u>Western World Ins. Co. v. American and Foreign Ins. Co.</u> , 180 F. Supp 2d 224 (D. Maine 2002) (holding that exclusion precluded coverage for lawsuit against police department in excessive force case because any negligent conduct involving the officer's training and experience was encompassed within the professional services exclusion)		
Maryland	<u>Utica Mut. Ins. Co. v. Miller</u> , 130 Md. App. 373, 746 N.E.2d 935 (Md. Ct. App. 2000) (the act or service must be such as exacts the use or application of special learning or attainments of some kind. The term 'professional' in the context used in the policy provision means something more than mere proficiency in the performance of a task and implies intellectual skill as contrasted with that used in an occupation for production or sale of commodities)	<u>Bolton Ptnrs. Inv. Consulting Group, Inc. v. Travelers Ind. Co. of America</u> , 2007 U.S. Dist. LEXIS 18238 (D. Md. March 15, 2007) (defamation claim against investment consulting firm by annuity company that previously provided retirement investment services to school board fell within professional liability exclusion because alleged defamatory opinions were in the context of insured's professional analysis of claimant's retirement plans)		<u>Utica Mut. Ins. Co. v. Miller</u> , 130 Md. App. 373, 746 N.E.2d 935 (Md. Ct. App. 2000) (complaint's allegation that insurance agent failed to monitor business operations, maintain records, and account for premiums addresses alleged failures in performing professional services)

<b>Jurisdiction</b>	<b>Standard to Determine Professional Service</b>	<b>Professional Services Exclusion Applied</b>	<b>Professional Services Exclusion Not Applied</b>	<b>Cases Involving Coverage Under Professional Liability Policy</b>
Massachusetts	<u>Roe v. Federal Ins. Co.</u> , 412 Mass. 43, 587 N.E.2d 214 (1992) (a professional act or service is one arising out of a vocation, calling, occupation, or employment involving specialized knowledge, labor, or skill, and the labor or skill involved is predominantly mental or intellectual, rather than physical or manual)	<u>Western World Ins. Co. v. Azoff</u> , 24 Mass. L. Rep. 450 (Mass. Sup. Ct. May 18, 2008) (exclusion applied to claim against general contractor for failure to supervise and ensure that an accurate survey of the property was properly done by engineer)	<p><u>GRE Ins. Group v. Metropolitan Boston Hous. Partnership</u>, 61 F.3d 79 (1<sup>st</sup> Cir. 1995 (Massachusetts law) (exclusion did not preclude personal injury claim arising from lead exposure at insured’s subsidized apartments because some of the claims raised legal theories of recovery broader than inadequate inspections)</p> <p><u>Jefferson Ins. Co. of New York v. Nat’l Union Fire Ins. Co. of Pittsburgh, Pa.</u>, 42 Mass. App. Ct. 94, 677 N.E.2d 225 (1997) (holding that delay by ambulance company to arrive at scene was in the nature of nonspecialized, clerical or administrative activity requiring neither special learning, intellectual skill, nor professional judgment and did not involve “the art of the adept”)</p> <p><u>Camp Dresser &amp; McKee, Inc. v. Home Ins. Co.</u>, 30 Mass. App. 318, 568 N.E.2d 631 (1991) (exclusion did not apply to the failure of a consulting company to warn employees working on a project of certain job</p>	<p><u>Medical Records Assocs. v. American Empire Surplus Lines Ins. Co.</u>, 142 F.3d 512 (1<sup>st</sup> Cir. 1998) (Massachusetts law) (concluding that fee-setting activity by medical records processing company was not a professional service but instead was a ministerial act lacking the relevant professional training and expertise)</p> <p><u>Clermont v. Cont’l Cas. Co.</u>, 773 F. Supp.2d 133 (D. Mass. 2011) (professional liability policy issued to attorney did not cover a former employer’s claim for over fees because the harms alleged occurred by reason of a business decision by the attorney and not the provision of legal services)</p> <p><u>USM Corp. v. First State Ins. Co.</u>, 420 Mass. 865, 652 N.E.2d 613 (1995) (claim against computer designer because of defects in computer system covered by errors and omissions policy because the error was inherent in the rendering of</p>

Jurisdiction	Standard to Determine Professional Service	Professional Services Exclusion Applied	Professional Services Exclusion Not Applied	Cases Involving Coverage Under Professional Liability Policy
			hazards because the challenged activities properly were viewed as “management tasks” of a nonprofessional nature)	<p>professional services and the policy did not require a negligent error)</p> <p><u>Reliance Nat’l Ins. Co. v. Sears, Roebuck &amp; Co.</u>, 58 Mass. App. Ct. 645, 792 N.E.2d 145 (2003) (concluding that billing for legal services does not draw on special learning acquired through rigorous training and therefore does not constitute a professional service)</p>
Michigan	<p><u>American Fellowship Mut. Ins. Co. v. Insurance Co. of North America</u>, 90 Mich. App. 633; 282 N.W.2d 425 (1979) (in determining whether a particular act or omission is of a professional nature, the act or omission itself must be looked to and not the title or character of the party who performs or fails to perform the act)</p> <p><u>Hilderbrand ex rel. Estate of Hilderbrandt</u>, 2001 Mich. App. LEXIS 1517, (Mich. App. June 5, 2001) (same)</p>	<p><u>Lansing Cmty. College v. Nat’l Union Fire Ins. Co.</u>, 2010 U.S. Dist. LEXIS 17696 (W.D. Mich. Mar. 1, 2010) (applying exclusion to claim against community college by wrongfully convicted student because the acts the officers utilized in investigating the case involved the specialized training and education they received to become certified as police officers)</p> <p><u>Walgreen Co. v. Rdc Enters.</u>, 2011 Mich. App. LEXIS 1513 (Mich. App. Aug. 23, 2011) (applying exclusion to claim against retailer by person who fell from catwalk during store construction because, even though the insured itself was not an architect, the claim</p>	<p><u>Great Am. Ins. Co. v. GeoStar Corp</u>, 2010 U.S. Dist. LEXIS 20258 (E.D. Mich. March 5, 2010) (refusing to apply exclusion on the grounds that not all claims associated with the mare-lease program fell under the professional errors and omissions exclusion)</p> <p><u>Cincinnati Ins. Co. v. Harding</u>, 2007 U.S. Dist. LEXIS 78867 (W.D. Mich. Oct. 24, 2007) (exclusion did not apply in homeowner’s policy in case involving injuries caused by waste oil tank explosion because, although work as a pipe welder requires specialized knowledge, labor, and</p>	<p><u>Northfield Ins. Co. v. Prof’l Case Mgmt.</u>, 1998 U.S. Dist. LEXIS 17157 (W.D. Mich. Sept. 29, 1998) (holding that insurer had duty to defend claim by mentally ill woman against the insured seeking damages for injuries she sustained when she jumped from a roof while under their care and/or supervision of the insured because such allegations might implicate coverage under professional liability policy)</p>

Jurisdiction	Standard to Determine Professional Service	Professional Services Exclusion Applied	Professional Services Exclusion Not Applied	Cases Involving Coverage Under Professional Liability Policy
		<p>involved the faulty design of the catwalk)</p> <p><u>Citizens Ins. Co. of Am. v. Ladi</u>, 2009 Mich. App. LEXIS 1560 (exclusion applied to claims against insured who arranged fireworks shows on the grounds that purchasing large-scale fireworks, designing a launch system, transporting the fireworks and launch system and igniting the fireworks at the request of a municipality constitutes services that are reserved for professionals)</p> <p><u>Hilderbrand ex rel. Estate of Hilderbrandt</u>, 2001 Mich. App. LEXIS 1517, (Mich. App. June 5, 2001) (applying exclusion to claim for coverage by consulting engineer on water main replacement project for wrongful death lawsuit alleging negligent excavation and shoring of trench).</p> <p><u>Centennial Ins Co v Neyer, Tiseo &amp; Hindo, Ltd</u>, 207 Mich App 235, 523 N.W.2d 808 (1994) (holding that exclusion applied to claim against consulting engineering firm for damage to underground telephone line because decision to drill for soil samples before calling “Miss Dig” was</p>	<p>skill, the labor and skill is predominantly physical or manual)</p>	

Jurisdiction	Standard to Determine Professional Service	Professional Services Exclusion Applied	Professional Services Exclusion Not Applied	Cases Involving Coverage Under Professional Liability Policy
		preliminary to, and part of, the professional service of conducting a soil investigation)		
Minnesota	<p><u>Ministers Life v. St. Paul Fire &amp; Marine Ins. Co.</u>, 483 N.W.2d 88 (Minn. App. 1992) A professional service is one calling for specialized skill and knowledge in an occupation or vocation and a professional service is predominantly intellectual or mental rather than physical)</p>	<p><u>W. Nat'l Mut. Ins. Co. v. Structural Restoration, Inc.</u>, 2010 Minn. App. Unpub. LEXIS 406 (Minn. App. 2010) (claim for damages to collapsed silo precluded by professional liability exclusion because the rendering of an opinion by a concrete restoration company involved a mental rather than physical skill, which required the insured to use its advanced or specialized knowledge)</p> <p><u>Reinhardt v. Certain Underwriters at Lloyd's, London</u>, 2007 Minn. App. Unpub. LEXIS 275 (Minn. App. 2007) (managing the assets and investments of investors by trust manager and equity investment manager requires specialized skills and thus clearly involves professional services)</p> <p><u>Ministers Life v. St. Paul Fire &amp; Marine Ins. Co.</u>, 483 N.W.2d 88 (Minn. App. 1992) (exclusion applied to mutual insurance company who was sued for defamation when it determined that a policy it issued was void and informed the policy holders that they were not</p>	<p><u>NewMech Cos. v. Transp. Ins. Co.</u>, 2006 U.S. Dist. LEXIS 65877 (D. Minn. Sep. 12, 2006) (holding that exclusion does not apply to claims against the designer of HVAC system whose design created mold in apartment units because exclusion had an exception for services within construction means, methods, techniques, sequences and procedures in capacity as construction manager and the work at issue was performed by the insured in its capacity as a construction contractor)</p> <p><u>American States Ins. Co. v. Grohn</u>, 1995 Minn. App. LEXIS 1220 (Minn. App. Sept. 26, 1995) (claim by injured horse rider against stable fell outside of exclusion because the allegations involved acts or omissions with respect to a particular horse having known dangerous propensities and were not based on any specialized knowledge of horse</p>	<p><u>Pac. Ins. Co. v. Burnet Title, Inc.</u>, 2003 U.S. Dist. LEXIS 17719 (D. Minn. Sept. 24, 2003) (concluding that claims against title company for its failure to follow requirements imposed by RESPA and state statutes, and making referrals without properly disclosing relationships with third-party vendors was "close enough to the professional end of the spectrum to constitute professional services)</p>

Jurisdiction	Standard to Determine Professional Service	Professional Services Exclusion Applied	Professional Services Exclusion Not Applied	Cases Involving Coverage Under Professional Liability Policy
		covered by the policy because act of sending letter with coverage position involved insurance expertise and judgment)	characteristics and behavior)	
Mississippi	<u>Shelton v. The American Ins. Co.</u> , 507 So. 2d 894 (Miss. 1987) (professional service involves the application of special skill, knowledge and education arising out of a vocation, calling, occupation or employment)	<p><u>QBE Ins. Corp. v. Brown &amp; Mitchell, Inc.</u>, 591 F.3d 439 (5<sup>th</sup> Cir. 2009) (Mississippi law) (wrongful death claim resulting from trench collapse during sewer installation project overseen by the insured – the project engineer – was precluded because the complain explicitly attributed the accident to the breach of the insured’s professional responsibilities as the engineering firm at the site)</p> <p><u>United States Fid. And Guaranty Co. v. Hudson</u>, 2008 U.S. Dist. LEXIS 25736 (S.D. Miss. 2008) (defamation claim arising from statements made in bidding and pre-bidding process by professional consulting engineering firm hired to provide consulting services on building renovation were made in the course of providing professional services)</p>	<p><u>American Guar. and Liab. Ins. Co. v. LeFlore</u>, 2006 U.S. Dist. LEXIS 23975 (N.D. Miss. Apr. 24, 2006) (wrongful death claim arising out of vehicle accident not precluded by exclusion because claim for failure to maintain road and provide proper signage constituted general allegations of negligence)</p> <p><u>Burton v. Choctaw County</u>, 730 So. 2d 1 (Miss. 1997) (issue of fact existed as to whether burns sustained to resident at nursing facility while she was being bathed by nurse’s aide constituted professional services)</p>	<p><u>Haney v. Cont’l Cas. Co.</u>, 2010 U.S. Dist. LEXIS 3953 (S.D. Miss. Jan. 15, 2010) (no coverage for claims against insurance agent under errors and omissions policy because claims failed to allege a wrongful act, defined as negligent act, error or omission, and soliciting former company’s agents was not included in professional services enumerated in the policy)</p> <p><u>Shelton v. The American Ins. Co.</u>, 507 So. 2d 894 (Miss. 1987) (claim against life insurance underwriter for making false and fraudulent statements with intent to induce another to enter into an employment contract were not made in insured’s professional capacity)</p>

<b>Jurisdiction</b>	<b>Standard to Determine Professional Service</b>	<b>Professional Services Exclusion Applied</b>	<b>Professional Services Exclusion Not Applied</b>	<b>Cases Involving Coverage Under Professional Liability Policy</b>
Missouri	<p><u>American Econ. Ins. Co. v. Jackson</u>, 476 F.3d 620 (8<sup>th</sup> Cir. 2007) (applying Missouri law) (court must look to the act or omission itself and not the title or character of the party who performs or fails to perform the act to determine whether a particular service or treatment is professional in nature)</p> <p><u>Jerome Group, Inc. v. Cincinnati Ins. Co.</u>, 2003 U.S. Dist. LEXIS 7962 (E.D. Mo. May 9, 2003) (professional act or service is one arising out of a vocation, calling, occupation, or employment involving specialized knowledge, labor, or skill, and the labor or skill involved is predominantly mental or intellectual, rather than physical or manual)</p>	<p><u>American Econ. Ins. Co. v. Jackson</u>, 476 F.3d 620 (8<sup>th</sup> Cir. 2007) (applying Missouri law) (applying exclusion to preclude family's wrongful death claim against nursing home involving death by patient in heat wave because the decision to not turn on the air conditioning rested on the administrator's training and expense as a nurse and nursing home administrator)</p>		<p><u>Jerome Group, Inc. v. Cincinnati Ins. Co.</u>, 2003 U.S. Dist. LEXIS 7962 (E.D. Mo. May 9, 2003) (claims for fraudulent billing not covered under errors and omissions printers policy because the policy only covered errors in the printing services themselves, not errors in billing)</p>
Montana				
Nebraska	<p><u>Marx v. Hartford Accident &amp; Indem. Co.</u>, 183 Neb. 12, 157 N.W.2d 870 (Neb. 1968) (professional service is one arising out of a vocation, calling, occupation, or employment involving specialized knowledge, labor or skill, and the labor or skill is predominantly mental or intellectual, rather</p>			<p><u>Marx v. Hartford Accident &amp; Indem. Co.</u>, 183 Neb. 12, 157 N.W.2d 870 (Neb. 1968) (concluding that negligent act of pouring benzene, rather than water, into sterilization container required no special training or professional skill and in no sense constituted the</p>

Jurisdiction	Standard to Determine Professional Service	Professional Services Exclusion Applied	Professional Services Exclusion Not Applied	Cases Involving Coverage Under Professional Liability Policy
	than physical or manual.)			rendering or failure to render professional services)
Nevada				
New Hampshire	<p><u>Niedzielski v. St. Paul Fire &amp; Marine Ins. Co.</u>, 134 N.H. 141, 589 A.2d 130 (1991) (professional act or service is one arising out of a vocation, calling, occupation, or employment involving specialized knowledge, labor, or skill that is predominantly mental or intellectual, rather than physical or manual and “the question of professional liability coverage is determined, not by the professional status of the actor, but by the nature of the tortious act”)</p>	<p><u>Windham Envtl. Corp. v. United States Fid. &amp; Guar. Co.</u>, 2008 U.S. Dist. LEXIS 86567 (D. N.H. Sept. 29, 2008) (applying exclusion to claim against insured alleging that insured did not perform with professional skill and care when the sequestration agent used in groundwater remediation system failed to prevent iron fouling in injection wells)</p> <p><u>Merchants Mut. Ins. Co. v. City of Concord</u>, 117 N.H. 482, 374 A.2d 945 (N.H. 1977) (applying exclusion where city failed to provide medical or psychiatric care to detainee but concluding that exclusion did not apply to negligent supervision because such conduct did not involve any professional skill or training)</p> <p><u>MacMillin Co. v. Aetna Casualty &amp; Sur. Co.</u>, 135 N.H. 189, 601 N.E.2d 169 (1992) (applying exclusion to general contractor for damages caused when floor of building the insured was constructing cracked because even though the insured was not an</p>		<p><u>Ross v. Home Ins. Co.</u>, 146 N.H. 468, 773 N.E.2d 654 (2001) (holding that the negligent hiring of an employee who rapes a client is not an act or omission done in rendering or failing to render professional services under legal professional liability policy and that, generally, personnel decisions of a law firm are relative and incidental to the business aspects of the firm, not its professional services)</p>

Jurisdiction	Standard to Determine Professional Service	Professional Services Exclusion Applied	Professional Services Exclusion Not Applied	Cases Involving Coverage Under Professional Liability Policy
		architectural or engineering company, its contract expressly provided for those services)		
New Jersey	<p><u>Atlantic Mutual Ins. Co. v. Cont’l Nat’l Am. Ins. Co.</u>, 123 N.J. Super, 241, 302 A.2d 177 (1973) (professional services means services performed by one in the ordinary course of the practice of his profession, on behalf of another)</p> <p><u>Princeton Ins. Co. v. Chunmuang</u>, 151 N.J. 80, 689 A.2d 9 (1997) (professional service is one arising out of a vocation, calling, occupation, or employment involving specialized knowledge, labor or skill, and the labor or skill is predominantly mental or intellectual, rather than physical or manual)</p>	<p><u>Kimberly Allison Tong &amp; Goo, Inc. v. Travelers Property Cas. Co. of America</u>, 352 Fed. Appx. 642 (3<sup>rd</sup> Cir. 2009) (New Jersey law) (applying exclusion to claims against insured architectural firm following the collapse of a parking garage it designed and rejecting contention that general negligence gave rise to a duty to defend)</p> <p><u>Atlantic Mutual Ins. Co. v. Continental National American Ins. Co.</u>, 123 N.J. Super, 241, 302 A.2d 177 (1973) (applying exclusion to claims against engineering company involving injuries sustained when sewer trench collapsed because the work was predominantly mental or intellectual and required the specialized knowledge and mental skill of a professional engineer)</p>		<p><u>Navigators Specialty Ins. Co. v. Scarinci &amp; Hollenbeck, LLC</u>, 2010 U.S. Dist. LEXIS 47124 (D.N.J. May 12, 2010) (holding that the acts complained of -- withholding material information from a court and submitting false statements to a court -- are acts that allegedly occurred in the context of the insured’s representation of its clients in a foreclosure action, and there is clearly a substantial nexus between such representation and the professional services that the clients sought from the insured lawyers)</p> <p><u>Hampton Medical Group, P.A. v. Princeton Ins. Co.</u>, 366 N.J. Super. 165, 840 A.2d 915 (2004) (holding that there was no coverage under medical professional liability policy for claims of improper billing because billing is most sensibly seen as either a separate</p>

Jurisdiction	Standard to Determine Professional Service	Professional Services Exclusion Applied	Professional Services Exclusion Not Applied	Cases Involving Coverage Under Professional Liability Policy
				service or an incidental part of the business--but not the profession)
New Mexico	<p><u>New Mexico Physicians Mut. Liability Co. v. LaMure</u>, 116 N.M. 92, 860 P.2d 734 (1993) (professional act or service is one arising out of a vocation, calling, occupation, or employment involving specialized knowledge, labor, or skill, and the labor or skill involved is predominantly mental or intellectual, rather than physical or manual)</p>	<p><u>Millers Cas. Ins. Co. of Texas v. Flores</u>, 117 N.M. 711, 876 P.2d 227 (1994) (exclusion in business owners policy applied to medical malpractice claim against physician and his assistant because, although claimant alleged negligent hiring, training and supervision, the fact that a physician utilizes a nonphysician assistant to perform a professional duty does not “alter the professional nature of that nondelegable duty.”)</p>		<p><u>Miller v. Triad Adoption and Counseling Service</u>, 133 N.M. 544, 65 P.3d 1099 (2003) (holding that it defies credulity to interpret the claims of fraudulent transfer, successor corporate liability, and civil conspiracy in attempting to avoid judgment associated with failed adoption as being the job of a counselor or human development professional working in an adoption agency)</p>
New York	<p><u>Insurance Co. of N. Am. v. Milberg Weiss Bershad S</u>, 1996 U.S. Dist. LEXIS 13388 (S.D.N.Y. Sept. 12, 1996) (something more than an act flowing from mere employment or vocation is essential, the act or service must be such as exacts the use or application of special learning or attainments of some kind)</p> <p><u>Reliance Ins. Co. v. National Union Fire Insurance Co.</u>, 262 A.D.2d 64, 65, 691 N.Y.S.2d 458, 460 (1st</p>		<p><u>General Ins. Co. of Am. v. City of New York</u>, 2005 U.S. Dist. LEXIS 35864 (S.D.N.Y. Dec. 23, 2005) (concluding that exclusion did not preclude defense obligations for claim against city alleging improper care given to a child because it was unclear whether individuals involved in the alleged improper care performed their acts drawing on specialized training and knowledge, made their decisions using ordinary supervisory</p>	<p><u>Cont'l Cas. Co. v. JBS Constr. Mgmt.</u>, 2010 U.S. Dist. LEXIS 85467 (S.D.N.Y. July 1, 2010) (claims against owner representative on construction project arising from crane collapse covered under architects and engineers professional liability policy even though insured was not nominal construction manager because services performed clearly fit within a common-sense</p>

Jurisdiction	Standard to Determine Professional Service	Professional Services Exclusion Applied	Professional Services Exclusion Not Applied	Cases Involving Coverage Under Professional Liability Policy
	<p>Dep't 1999) (to qualify as a professional service, task must involve professional's special acumen, not just normal powers of supervision)</p>		<p>powers, or were clerks following mandated procedures)</p> <p><u>Insurance Co. of N. Am. v. Milberg Weiss Bershad Specthrie &amp; Lerach</u>, 1996 U.S. Dist. LEXIS 13388 (S.D.N.Y. Sept. 12, 1996) (concluding that exclusion did not apply to claims against law firm alleging malicious prosecution, abuse of process, and defamation because, although the alleged defamatory statements were made against a background of litigation, they were of a kind which could have been made by any competitor or antagonist, lay or otherwise)</p> <p><u>Propis v. Firemen's Fund Ins. Co.</u>, 492 N.Y.S.2d 228 (N.Y. App. Div.) <i>aff'd</i> 66 N.Y.2d 828, 489 N.E.2d 250 (1985) (insurance agent's acts relating to the hiring and firing of an agent were nonprofessional business activities that were not themselves acts "inherent in the practice of the particular profession")</p>	<p>understanding of what a "construction manager" does)</p> <p><u>Albert J. Schiff Assoc., Inc. v. Flack</u>, 51 N.Y.2d 692, 417 N.E.2d 84 (N.Y. 1980) (the alleged willful misappropriation of a trade secret fell outside the scope of coverage of a life insurance agent professional liability policy)</p>

<b>Jurisdiction</b>	<b>Standard to Determine Professional Service</b>	<b>Professional Services Exclusion Applied</b>	<b>Professional Services Exclusion Not Applied</b>	<b>Cases Involving Coverage Under Professional Liability Policy</b>
North Carolina	<u>Duke University v. St. Paul Fire and Marine</u> , 96 N.C. App. 635, 386 S.E.2d 762 (1990) (a professional service is generally defined as one arising out of a vocation or occupation involving specialized knowledge or skills, and the skills are mental as opposed to manual)		<u>Duke University v. St. Paul Fire and Marine</u> , 96 N.C. App. 635, 386 S.E.2d 762 (1990) (holding that the exclusion did not apply to a wrongful death action arising out of injuries to a decedent whose dialysis chair moved while she was attempting to get out of it because it did not require professional training to foresee that a chair on casters might move when its occupant attempted to get out of it nor was professional training required to avoid the injury)	<u>Hartford Fire Ins. Co. v. St. Paul Fire &amp; Marine Ins. Co.</u> , 606 F. Supp. 2d 602, 2009 U.S. Dist. LEXIS 53069 (E.D.N.C. 2009) (claim arising from injuries sustained while riding in a pick-up truck being driven by an insured employee was not covered under health care facility medical professional liability policy because driving required no type of specialized health care or other specialized skills)  <u>Toms v. Lawyers Mut. Liab. Ins. Co.</u> , 104 N.C. App. 88, 408 S.E.2d 206 (1991) (issues of fact existed as to whether claim was covered under lawyer's malpractice policy because a jury could find that the insured was acting in his capacity as attorney and performed a professional service when he undertook - but failed - to procure the liability insurance)
North Dakota	<u>St. Paul Fire &amp; Marine</u>		<u>St. Paul Fire &amp; Marine</u>	<u>Central Dakota</u>

Jurisdiction	Standard to Determine Professional Service	Professional Services Exclusion Applied	Professional Services Exclusion Not Applied	Cases Involving Coverage Under Professional Liability Policy
	<p><u>Ins. Co. v. Three "D" Sales, Inc.</u>, 518 F. Supp. 305, 1981 U.S. Dist. LEXIS 9714, (D.N.D. 1981) (a professional act or service is one arising out of a vocation, calling, occupation, or employment involving specialized knowledge, labor, or skill, and the labor or skill involved is predominantly mental or intellectual, rather than physical or manual)</p>		<p><u>Ins. Co. v. Three "D" Sales, Inc.</u>, 518 F. Supp. 305, 1981 U.S. Dist. LEXIS 9714, (D.N.D. 1981) (preparation and sale of seed by farmer did not constitute the rendering of or failing to render professional services so as to fall within the exclusion)</p>	<p><u>Radiologists, P.C. v. Cont'l Casualty Co.</u>, 769 F. Supp. 323(D.N.D. 1991) (antitrust and other claims against medical service company not covered under medical malpractice policy because they were not "caused by" the rendering of professional services)</p>
Ohio	<p><u>Jacob v. Grant Life Choices</u>, 1995 Ohio App. LEXIS 2760 (1995) (professional act or service is one arising out of a vocation, calling, occupation or employment involving specialized knowledge, labor or skill. It means work requiring knowledge of an advanced type in a field of learning or science customarily acquired by a prolonged course of study or specialized intellectual instruction as distinguished from training in the performance of routine, manual, or physical processes)</p> <p><u>GRE Ins. Group v. Normandy Pointe Assoc. , Montgomery</u> 2002 Ohio 1197, 2002 Ohio App. LEXIS 1018 (2002) (professional</p>	<p><u>Erie Ins. Exch. v. Colony Dev. Corp.</u>, 2003 Ohio 7232, 2003 Ohio App. LEXIS 2589 (2003) (applying exclusion to faulty construction claims asserted against general contractor because exclusion precluded coverage for supervisory, inspection or engineering services and coordination, supervision, inspection, and approval of subcontractors and subcontractors' work was a service performed by the insured in the ordinary course of its profession as a general contractor)</p> <p><u>Leighton v. American Econ. Ins. Co.</u>, 1997 Ohio App. LEXIS 5361 (1997) (exclusion applied to claims against emergency medical technicians' who were alleged to be negligent in moving</p>	<p><u>Cincinnati Ins. Co. v. Canton Fin.</u>, 2003 Ohio App. LEXIS 6680 (2003) (exclusion did not apply to claims arising from the insured's business of lending money)</p> <p><u>GRE Ins. Group v. Normandy Pointe Assoc. , Montgomery</u> 2002 Ohio 1197, 2002 Ohio App. LEXIS 1018 (2002) (finding that professional services exclusion did not apply to a general partnership engaged in the business of developing and marketing home sites who contracted with consultant to provide engineering services)</p> <p><u>Jacob v. Grant Life Choices</u>, 1995 Ohio App. LEXIS 2760</p>	<p><u>American Policyholders Ins. Co. v. Michota</u>, 156 Ohio St. 578, 103 N.E.2d 817 (1952) (injury sustained by patient who fell from examining chair was one arising out of the practice of the insured's profession and thus constituted an injury resulting from professional services rendered because nothing in the policy restricted coverage to malpractice)</p> <p><u>Davis &amp; Meyer Law, Ltd. v. Pronational Ins. Co.</u>, 2007 Ohio 3552 (Ohio Ct. App. 2007) (claims against title insurance agency not covered because billing a client, a homeowner, for recording fees and</p>

<b>Jurisdiction</b>	<b>Standard to Determine Professional Service</b>	<b>Professional Services Exclusion Applied</b>	<b>Professional Services Exclusion Not Applied</b>	<b>Cases Involving Coverage Under Professional Liability Policy</b>
	services are services requiring advanced knowledge in a field acquired by a prolonged course of study or specialized intellectual instruction)	claimant after accident leading to paralysis)	(1995) (claim against fitness center for failing to send member to the hospital after a heart attack not precluded by exclusion)	costs is not a professional service) <u>Ohio Govt. Risk Mgt. Plan v. Cty. Risk Sharing Auth., Inc.</u> , 130 Ohio App. 3d 174, 183, 719 N.E.2d 992, 998 (1998) (holding that a governmental medical services professional liability endorsement did not provide coverage for injuries suffered from an automobile accident involving an ambulance because the emergency medical technician driving the ambulance was not providing professional medical services to the injured parties when he was involved in the accident that caused their injuries)
Oklahoma	<u>Gulf Ins. Co. v. Gold Cross Ambulance Serv. Co.</u> , 327 F.Supp. 149 (W.D.Okla.1971) (a professional act or service is one arising out of a vocation, calling, occupation, or employment involving specialized knowledge, labor or skill, and the labor or skill involved is predominantly mental or intellectual, rather than physical or manual. Whether particular work is of a	<u>Platte River Ins. Co. v. Seminole Healthcare</u> , 2010 U.S. Dist. LEXIS 105179 (E.D. Okla. Sept. 30, 2010) (holding that claim arising from physician's failure to inform patient of recommendation that a lung scan be performed excluded by exclusion because that the rendering of follow-up care, its advisability, risks, and nature requires "specialized knowledge,	<u>Gulf Ins. Co. v. Gold Cross Ambulance Serv. Co.</u> , 327 F.Supp. 149 (W.D.Okla.1971) (holding that ambulance service is primarily manual and while it may require skill on the part of those who render the service, it does not require knowledge of an advanced type in a field of learning customarily acquired after a long period of specialized intellectual	<u>Mutual Assur. Administrators v. United States Risk Underwriters, Inc.</u> , 993 P.2d 795 (Okla. Civ. App. 1999) (holding that policy issued to insured as third party administrator of group health benefits did not cover claim alleging misconduct in the solicitation and retention of clients)

Jurisdiction	Standard to Determine Professional Service	Professional Services Exclusion Applied	Professional Services Exclusion Not Applied	Cases Involving Coverage Under Professional Liability Policy
	professional nature is determined by the work in question and not by the title of the worker)	labor, or skill)	instruction.)	
Oregon	<u>Multnomah County v. Oregon Auto. Ins. Co.</u> , 256 Or. 24, 470 P.2d 147 (1970) (professional act or service is one arising out of a vocation, calling, occupation or employment involving specialized knowledge, labor, or skill, and the labor or skill involved is predominantly mental or intellectual rather than physical or manual)	<u>Multnomah County v. Oregon Auto. Ins. Co.</u> , 256 Or. 24, 470 P.2d 147 (1970) (holding that jail medical technician was rendering professional services when she failed to give prisoner an insulin shot because the decision to give or withhold insulin required the application of special learning)	<u>Hedmann v. Liberty Mut. Fire Ins. Co.</u> , 158 Ore. App. 510, 974 P.2d 755 (1999) (claim that physician negligently prescribed a drug in order to maintain sexual relationship and exert control over patient was not precluded by the exclusion because the alleged negligence was the use of a prescription drug to seduce and subjugate the patient and did not involve medical treatment)	
Pennsylvania	<u>Harad v. Aetna Cas. &amp; Surety Co.</u> , 839 F.2d 979 (3d Cir. 1988) (a professional service or act is one arising out of a vocation, calling, occupation, or employment involving specialized knowledge, labor, or skill)  <u>Physicians Ins. Co. v. Pistone</u> , 555 Pa. 616, 726 A.2d 339 (1999) (professional act or service is one arising out of a vocation, calling, occupation or employment involving specialized knowledge, labor or skill, and the skill involved is predominantly mental	<u>Harad v. Aetna Cas. &amp; Surety Co.</u> , 839 F.2d 979 (3d Cir. 1988) (applying exclusion contained in business liability policy for claim against attorney alleging malicious prosecution).  <u>Lumbermens Mut. Cas. Co. v. Erie Ins. Co.</u> , 2007 U.S. Dist. LEXIS 74568 (E.D. Pa. Oct. 4, 2007) (applying exclusion to auto accident claim filed against the insured resulting from stop sign obscured by vegetation when insured engineering company failed to properly perform inspection service and control roadside	<u>Am. W. Home Ins. Co. v. Donnelly Distrib.</u> , 2011 U.S. Dist. LEXIS 106039 (E.D. Pa. Sept. 15, 2011) (refusing to apply exclusion to bodily injury claim sustained when pedestrian tripped on plastic tie used by company to bind newspapers for delivery)  <u>Hartford Cas. Ins. Co. v. New Hope Healthcare, Inc.</u> , 2011 U.S. Dist. LEXIS 26987 (E.D. Pa. Mar. 16, 2011) (exclusion did not preclude a duty to defend a wrongful	<u>Visiting Nurse Assoc. of Greater Philadelphia v. St. Paul Fire and Marine Ins. Co.</u> , 65 F.3d 1097 (3d Cir. 1995) (concluding that suit alleging monopolistic business practices and antitrust violations by a rival health care provider did  <u>Cincinnati Ins. Co. v. Stonebridge Fin. Corp.</u> , 2011 U.S. Dist. LEXIS 67991 (E.D. Pa. June 23, 2011) (claims against a financial institution regarding loan commitment

Jurisdiction	Standard to Determine Professional Service	Professional Services Exclusion Applied	Professional Services Exclusion Not Applied	Cases Involving Coverage Under Professional Liability Policy
	or intellectual, rather than physical or manual)	vegetation)  <u>Legion Indem. Co. v. CareStat Ambulance, Inc.</u> , 152 F. Supp. 2d 707 (E.D. Pa. 2001) (dispatching an ambulance in a timely manner and notifying someone that no ambulance was available are professional services as described in a professional services exclusion)	death claim against personal care home involving when facility allowed decedent to leave the facility unsupervised because suit alleged breaches of professional and non-professional duties)  <u>Scottsdale Indem. Co. v. Hartford Cas. Ins. Co.</u> , 2008 U.S. Dist. LEXIS 2454 (E.D. Pa. Jan. 14, 2008) (refusing to apply exclusion to negligence claim against insured providing safety inspection services for injuries sustained when worker fell from a ladder because the services the insured provided (to point out but not rectify safety violations) involved something less than a vocation or calling and was closer to a proficiency in the performance of a task)	agreements covered under professional liability policy.)  <u>Biborosch v. Transamerica Ins. Co.</u> , 412 Pa. Super. 505, 603 A.2d 1050, 1053 (Pa. Super.), appeal denied, 532 Pa. 653, 615 A.2d 1310 (Pa. 1992) (holding that insurer had duty to defend against a suit for wrongful termination brought by an employee of a general insurance agent because policy not only covered the insured as an insurance broker, but also a general agent or manager)  <u>Transcore v. Caliber One Indem. Co.</u> , (Pa. Super. Ct. Apr. 27, 2009) (holding that professional liability policy did not provide coverage for a patent infringement claim brought by third-party against company that supplied and installed transponders)
Rhode Island	<u>Sanzi v. Shetty</u> , 864			

Jurisdiction	Standard to Determine Professional Service	Professional Services Exclusion Applied	Professional Services Exclusion Not Applied	Cases Involving Coverage Under Professional Liability Policy
	A.2d 614 (R.I. 2005) (something more than an act flowing from mere employment or vocation is essential. The act or service must be such as exacts the use or application of special learning or attainments of some kind)			
South Carolina	<u>South Carolina Medical Malpractice Liability v. Ferry</u> , 291 S.C. 460, 354 S.E.2d 378 (1987) (professional act or service is one arising out of a vocation, calling, occupation, or employment involving specialized knowledge, labor, or skill, and the labor or skill involved is predominantly mental or intellectual, rather than physical or manual)	<u>Western World Ins. Co. v. Empire Fire &amp; Marine Ins. Co.</u> , 2006 U.S. Dist. LEXIS 83800 (D.S.C. Nov. 16, 2006) (refusing to apply exclusion to claim against ambulance service insured when insured failed to properly secure patient constituted professional services because securing and transporting an individual on a rolling stretcher requires specialized knowledge)	<u>Isle of Palms Pest Control Co. v. Monticello Ins. Co.</u> , 319 S.C. 12, 559 S.E.2d 318 (S.C. Ct. App. 1994) (claim alleging failure of the exterminator insured to identify termite infestation was not precluded because if inspection services were professional services then extermination services would also have been excluded, and the entire policy would have been useless to the insured)	<u>Bradford &amp; Bradford, P.A. v. Attorneys Liab. Prot. Soc’y, Inc.</u> , 2010 U.S. Dist. LEXIS 111923 (D.S.C. Oct. 20, 2010) (concluding that claim by bank against law firm for the firm’s unwitting participation in an alleged check cashing scheme did not qualify as professional services under firm’s professional liability policy)
South Dakota	<u>St. Paul Fire &amp; Marine Ins. Co. v. Engelmann</u> , 2002 SD 8, 639 N.W.2d 192 (2002) (professional acts or services are those that entail the performance of a vocation, calling, or occupation requiring learning and intellectual skill)			
Tennessee	<u>St. Paul Fire &amp; Marine</u>	<u>Trinity Universal Ins. Co.</u>		<u>Trinity Universal Ins.</u>

Jurisdiction	Standard to Determine Professional Service	Professional Services Exclusion Applied	Professional Services Exclusion Not Applied	Cases Involving Coverage Under Professional Liability Policy
	<p><u>Ins. Co. v. Torpoco</u>, 1993 Tenn. App. LEXIS 43 (1993) (a professional act or service is one arising out of a vocation, calling, occupation, or employment involving specialized knowledge, labor, or skill, and the labor or skill involved in predominantly mental or intellectual, rather than physical or manual)</p> <p><u>St. Paul Fire &amp; Marine Ins. Co. v. Couch</u>, 1990 Tenn. App. LEXIS 597 (1990) (same)</p>	<p><u>v. Turner Funeral Home, Inc.</u>, 2003 U.S. Dist. LEXIS 27205 (E.D. Tenn. Dec. 12, 2003) (claims involving funeral home's sending corpses to crematory that did not properly dispose of bodies arose out of professional services and were excluded under the policy)</p>		<p><u>Co. v. Turner Funeral Home, Inc.</u>, 2003 U.S. Dist. LEXIS 27205 (E.D. Tenn. Dec. 12, 2003) (claims involving funeral home's sending corpses to crematory that did not properly dispose of bodies fell within coverage of professional liability policies)</p>
Texas	<p><u>Atlantic Lloyd's Ins. Co. of Texas v. Susman Godfrey, LLC</u>, 982 S.W.2d 472 (Tex. App. Dallas 1998) (to qualify as a professional service, the task must arise out of acts particular to the individual's specialized vocation and an act of professional service is not deemed a professional service merely because it is performed by a professional. Instead, it must be necessary for the professional to use his specialized knowledge or training.)</p>	<p><u>Admiral Ins. Co. v. Ford</u>, 607 F.3d 420 (5<sup>th</sup> Cir. 2010) (holding that non-technical tasks involved in implementation of a drilling plan require specialized training and knowledge as part of the fulfillment of a drilling contract and, thus, qualified as a professional service)</p>		<p><u>Landmark Am. Ins. Co. v. Soutex Surveyors, Inc.</u>, 2010 U.S. Dist. LEXIS 140966 (E.D. Tex. Dec. 22, 2010) (concluding that land surveyor's failure to warn of subsequently discovered survey elevation errors constituted a failure to render a professional service when discovery of such errors is premised on knowledge obtained from surveying experience and when surveying expertise underlines the alleged failure to warn)</p> <p><u>Gregg &amp; Valby, LLP</u></p>

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				<p><u>v. Great Am. Ins. Co.</u>, 316 F. Supp.2d 505 (S.D. Tex. 2003) (law firm's billing and fee-setting practices were not professional services but rather merely administrative tasks inherent to all businesses)</p> <p><u>Atlantic Lloyd's Ins. Co. of Texas v. Susman Godfrey, LLC</u>, 982 S.W.2d 472 (Tex. App. Dallas 1998) (holding that alleged defamatory solicitation letter sent by an attorney did not implicate a professional service because soliciting clients was not incidental to the profession and because it did not require the specialized skills particular to the legal profession)</p>
Utah		<p><u>Fire Ins. Exch. v. Alsop</u>, 709 P.2d 389 (Utah 1985) (applying exclusion to claims against chiropractor who performed treatment during patient's labor and delivery)</p>		
Vermont		<p><u>Maine Mut. Fire Ins. Co.</u></p>		

Jurisdiction	Standard to Determine Professional Service	Professional Services Exclusion Applied	Professional Services Exclusion Not Applied	Cases Involving Coverage Under Professional Liability Policy
		<p><u>v. Tinker</u>, 178 Vt. 522, 872 A.2d 360 (2005) (concluding that exclusion applies in business policy for damages caused as a result of services provided as a land surveyor)</p>		
Virginia	<p><u>St. Paul Fire and Marine Ins. Co. v. Jacobson</u>, 826 F. Supp. 155 (E.D. Va. 1993) (court must look to the nature of the insured's act or conduct, not to the insured's title and for an act to constitute a professional service it must be such as exacts the use or application of special learning or attainment of some kind)</p>	<p><u>Bohreer v. Erie Ins. Group</u>, 475 F. Supp.2d 578 (E.D. Va. 2007) (holding that claim against funeral home for improperly cremating the decedent fell within the scope of the exclusion as they arose out of, or were inextricably intertwined with, the professional service of cremation)</p>	<p><u>Capitol Env'tl. Servs. v. N. River Ins. Co.</u>, 536 F. Supp. 2d 633 (E.D. Va. 2008) (concluding that the exclusion did not bar coverage for an automobile accident involving the insured's empty trash truck on the grounds that the exclusion was ambiguous and the accident at issue in no way involved "operations including the transportation of waste handling)</p>	<p><u>Minnesota Lawyers Mut. Ins. Co. v. Antonelli, Terry, Stout &amp; Kraus, LLP</u>, 2010 Dist. LEXIS 122836 (E.D. Va. Nov. 18, 2010) (finding that breach of fiduciary duty claim involving interests in wireless email technology arose out of legal advice rendered by the insureds for purposes of their lawyers professional liability policy)</p>
Washington	<p><u>Standard Fire Ins. Co. v. Blakeslee</u>, 54 Wash. App. 1, 771 P.2 1172 (Wash. Ct. App. 1989) (in determining whether a particular act involves professional services, courts look to the act itself, rather than the title of the party performing the act or the place where the act occurred)</p> <p><u>Planet Earth Found. v. Gulf Underwriters Ins. Co.</u>, 2005 Wash. App. LEXIS 3093 (Wash. Ct. App. Dec. 5, 2005) (a</p>	<p><u>Planet Earth Found. v. Gulf Underwriters Ins. Co.</u>, 2005 Wash. App. LEXIS 3093 (Wash. Ct. App. Dec. 5, 2005) (applying exclusion to claim against nonprofit provider of advertising and public relation services because the services provided required specialized knowledge and skills that were predominantly mental and intellectual)</p> <p><u>Evanston Ins. Co. v. Clark County</u>, 2011 U.S. Dist. LEXIS 131828 (W.D. Wash. Nov. 14,</p>		<p><u>Woo v. Fireman's Fund Ins. Co.</u>, 164 P.3d 454 (Wash. 2007) (concluding that claim against dentist arising from practical joke played on patient gave rise to a duty to defend under professional liability policy)</p> <p><u>Chi. Ins. Co. v. Ctr. for Counseling &amp; Health Res.</u>, 2011 U.S. Dist. LEXIS 35616 (W.D. Wash. Mar. 21, 2011) (claim involving billing</p>

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	<p>professional service is one arising out of a vocation, calling, occupation, or employment involving specialized knowledge, labor, or skill, and the labor or skill involved is predominantly mental or intellectual, rather than physical or manual)</p>	<p>2011) (applying exclusion to wrongful death claims by family of inmate who committed suicide while incarcerated because, in the context of the case, professional services includes all activities performed by medical personnel directed at the treatment of the patient)</p>		<p>practices of health center do not constitute professional services)</p>
West Virginia	<p><u>Boggs v. Camden-Clark Mem. Hosp. Corp.</u>, 225 W. Va. 300, 693 S.E.2d 53 (2010) (professional services denotes those services rendered by someone with particularized knowledge or skill in his or her chosen field)</p>	<p><u>Boggs v. Camden-Clark Mem. Hosp. Corp.</u>, 225 W. Va. 300, 693 S.E.2d 53 (2010) (applying exclusion contained in commercial general liability policy to malicious prosecution claims asserted against attorney by non-client because the claim arose exclusively out of his legal representation)</p> <p><u>Webster County Solid Waste Auth. v. Brackenrich &amp; Assoc.</u>, 217 W. Va. 304, 617 S.E.2d 851 (2005) (holding that exclusion applied to action alleging negligent inspection of professional engineering services in the design and supervision of the construction of a landfill)</p> <p><u>State Auto. Mut. Ins. Co. v. Alpha Eng'g Servs.</u>, 208 W. Va. 713, 542 S.E.2d 876 (2000) (applying exclusion to claim against insured providing underground mining operations even</p>	<p><u>Johnson v. Acceptance Ins. Company</u>, 292 F. Supp. 2d 857 (N.D. W. Va. 2003) (refusing to apply exclusion to wrongful death action against insured that operated homes for mentally disabled after patient was struck and killed by automobile because services provided to patient were supervisory and custodian in nature, not professional, and because term “professional services” was ambiguous)</p>	

Jurisdiction	Standard to Determine Professional Service	Professional Services Exclusion Applied	Professional Services Exclusion Not Applied	Cases Involving Coverage Under Professional Liability Policy
		though the negligent engineering services were provided through the use of an agent)		
Wisconsin	<p><u>Steven G. v. Herget</u>, 178 Wis. 2d 674, 505 N.W.2d 422 (Wis. Ct. App. 1993) (professional services does not include all forms of a professional’s conduct simply because a person is a professional, there must be a causal relationship between the alleged harm and the complained of professional act or service)</p> <p><u>Leverence v. United States Fid. &amp; Guar.</u>, 158 Wis. 2d 64, 462 N.W.2d 218 (Wis. Ct. App. 1990) (professional acts or services are acts or services involving specialized knowledge, labor or skill which is predominantly mental or intellectual rather than physical or manual)</p>	<p><u>Rhein Building Co. v. Herman Gehrt</u>, 21 F. Supp. 2d 896 (E.D. Wis. 1998) (concluding that a professional services exclusion in a business liability policy issued to an architect precluded coverage for a copyright claim “because the alleged infringement involved preparing drawings and the policy language does not limit the exclusion to negligent acts.”)</p> <p><u>Am. Family Mut. Ins. Co. v. Am. Girl, Inc.</u>, 673 N.W.2d 65 (2003) (applying exclusion to property damage resulting from a soil engineering subcontractor giving faulty site-preparation advice to a general contractor in connection with the construction of a warehouse because the liability at issue arose out of the rendering of professional services – faulty site preparation advice – which falls squarely within the exclusion)</p>	<p><u>Chapman v. Mut. Serv. Cas. Ins. Co.</u>, 35 F. Supp. 2d 693 (E.D. Wis. 1999) (refusing to apply exclusion in claim against real estate company for failing to properly remediate lead paint in a house because claim that insured was negligent in the hiring, supervising, and inspecting the work of the paint contractors did not encompass a professional service as that phrase was used in the policy)</p> <p><u>Leverence v. United States Fid. &amp; Guar.</u>, 158 Wis. 2d 64, 462 N.W.2d 218 (Wis. Ct. App. 1990) (refusing to apply exclusion to claims by homeowners against a builder whose negligence in the construction of their homes caused excessive moisture retention because the claims arose out of manufacture of an allegedly defective product (pre-fab homes) and not malpractice in rendering of a professional service)</p>	<p><u>Nowacki v. Federated Realty Group, Inc.</u>, 36 F. Supp. 2d 1099 (E.D. Wis. 1999) (holding that an insurer who had issued a Real Estate Agents Errors and Omissions Policy was obligated to defend a lawsuit alleging various RESPA violations because alleged conduct might have been caused negligently rather than intentionally)</p> <p><u>Shelley v. Moir</u>, 1987 Wis. 2d 218, 405 N.W.2d 737 (1987) (finding coverage under Real Estate Agents and Brokers Professional Liability policy for injuries arising from tenant’s fall on a stairwell due to failure to maintain property because policy defined professional services to include property management)</p>
Wyoming	<u>T.M. v. Exec. Risk</u>			

<b>Jurisdiction</b>	<b>Standard to Determine Professional Service</b>	<b>Professional Services Exclusion Applied</b>	<b>Professional Services Exclusion Not Applied</b>	<b>Cases Involving Coverage Under Professional Liability Policy</b>
	<p><u>Indem., Inc.</u>, 59 P.3d 721 (Wyo. 2002) (a professional act or service is generally defined as one arising out of a vocation or occupation involving specialized knowledge or skills, and the skills are mental as opposed to manual)</p>			