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INSURANCE LAW BLOG

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# 4th Department Narrowly Interprets Professional Services

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In the recent case of *Cty. of Erie v. Selective Ins. Co. of Am.*, 2026 NY Slip Op 04092 (App. Div. 4th Dept.), New York's Appellate Division, Fourth Department held that a general liability carrier for a construction manager owed additional insured coverage to the County of Erie, notwithstanding an exclusion in the construction manager's policy for injuries arising out of professional services.

The underlying case involved injuries sustained when the underlying plaintiff fell off of her bicycle at a park owned by the County when she transitioned from the pavement edge to grass.

LiRo Engineers, Inc. ("LiRo"), insured by Zurich, was hired to provide construction management services in connection with a paving project.  LiRo was sued by the underlying plaintiff, along with the paving contractor and the County.  The underlying plaintiff alleged that all defendants were negligent "in the ownership, operation, maintenance, management, construction, control and design of the . . . pavement." Zurich it not dispute that the County met its initial burden of establishing its entitlement to coverage under the Zurich policy, but rather contended that it established the applicability of the professional services exclusion in the policy, which provides that "[t]his insurance does not apply to . . . '[b]odily injury' . . . arising out of the rendering of, or failure to render, any professional architectural, engineering or surveying services."

The court noted that the duty to defend can be defeated only if the allegations fell solely and entirely within the policy exclusion, and that due to the broad allegations regarding ownership, operation, management, construction, control and design, the professional services exclusion did not provide a dispositive coverage defense as pertains to the duty to defend.

The case illustrates that a court will narrowly read an exclusion, especially when determining the duty to defend.