

ALERT

Improper Use of Funds Exclusion Did Not Render Coverage for Escrow Agent Illusory

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Applying Illinois law, a federal district court has held that a professional liability policy issued to an escrow agent did not afford coverage for claims alleging that the agent mishandled escrow funds by failing to disburse the funds to pay claimants' property taxes and insurance premiums or to return the funds to claimants. *Hawks v. Am. Escrow, LLC*, 2012 WL 966059 (N.D. Ill. Mar. 16, 2012). The court concluded that the allegations fell squarely within the policy's exclusion barring coverage for claims "alleging, based upon, arising out of, or attributable to the commingling or improper use of, or failure to properly segregate or safeguard funds." In reaching this conclusion, the court rejected the insured's argument that because its business is escrow services, reading the exclusion to apply to such services renders the coverage purchased illusory. The court pointed out that the policy named as insureds additional affiliated entities that provided other services. The court also noted that the definition of covered professional services in the policy went beyond simply the collection and disbursement of funds.

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