2017 IL App (5th) 160452-U

NO. 5-16-0452

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

BRUCE A. WILLEY and WILLEY O'BRIEN, LC,	)	Appeal from the Circuit Court of St. Clair County.
Plaintiffs-Appellees,	)	
v.	)	No. 14-CH-144
MINNESOTA LAWYERS MUTUAL INSURANCE COMPANY, FLOYD SCHLUETER, and IDEA CATALYST, LLC,	)	
Defendants	)	
(Minnesota Lawyers Mutual Insurance Company, Defendant-Appellant).	)	Honorable Stephen P. McGlynn, Judge, presiding.

JUSTICE OVERSTREET delivered the judgment of the court.
Presiding Justice Barberis and Justice Goldenhersh concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court correctly determined that, under the terms of a professional liability insurance policy, an insurer had a duty to defend an insured attorney against a claim made against the attorney and his law firm for alleged breach of fiduciary duties arising from the attorney's providing escrow agent services.

¶ 2 The plaintiffs, Bruce A. Willey and Willey O'Brien, LC, brought an action against their professional malpractice insurer, the defendant, Minnesota Lawyers Mutual

Insurance Company (Minnesota Lawyers Mutual), seeking a declaratory judgment that Minnesota Lawyers Mutual had a duty to defend them in a pending lawsuit filed by Floyd Schlueter. The parties filed cross-motions for summary judgment. The circuit court, applying Iowa law, granted Willey and Willey O'Brien's motion for summary judgment, holding that Minnesota Lawyers Mutual had a duty to defend them in the pending lawsuit. Minnesota Lawyers Mutual now appeals the circuit court's summary judgment, arguing that Schlueter's claims against Willey and Willey O'Brien do not fall within the professional insurance policy's coverage. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 Willey is an attorney licensed to practice law in Illinois and Iowa and is a partner in the law firm, Willey O'Brien, which is a limited liability company, organized under the laws of the State of Iowa. Willey O'Brien purchased professional liability insurance from Minnesota Lawyers Mutual. Willey O'Brien is the policy's named insured, and Willey is an "INSURED" under the policy.

¶ 5 Willey is also the vice president and/or a manager of another entity separate from his law practice, Idea Catalyst, which is an Iowa limited liability company. In October 2007, Schlueter entered into a contract with Idea Catalyst in which Idea Catalyst agreed to procure a $25 million "standby letter of credit" for Schlueter to use in his purchase of real estate in the area of Belleville, Illinois. As legal counsel for Idea Catalyst, Willey drafted the contract agreement between Schlueter and Idea Catalyst. He signed the contract on behalf of Idea Catalyst as either the vice president of Idea Catalyst or the

manager of Idea Catalyst. The signature line is unclear concerning in which capacity he signed the agreement.

¶ 6 The contract between Schlueter and Idea Catalyst required Schlueter, upon execution of the contract, to transfer $500,000 as part of Idea Catalyst's fees for procuring the standby letter of credit. The agreement provided, "All consideration due to IDEA Catalyst is to be paid *** by wire to the following account: Willey O'Brien, LC, IOLTA Trust Account *** f/b/o IDEA Catalyst, LLC." Schlueter, therefore, wired $500,000 to Willey O'Brien's client trust account as required under the terms of the contract.

¶ 7 On March 14, 2012, Schlueter filed a three-count complaint against Idea Catalyst, Willey, and Willey O'Brien. Schlueter alleges that he wired $500,000 to Willey O'Brien's client trust account as required by the contract, but Idea Catalyst failed to procure the standby letter of credit. He alleges that he has requested the return of the $500,000, but Idea Catalyst, Willey, and Willey O'Brien have refused to return the funds and that Willey distributed the funds from the trust account.[1]

¶ 8 Count I of Schlueter's complaint alleges a breach of contract claim against Idea Catalyst. Counts II and III allege breach of fiduciary duty claims against Willey and Willey O'Brien. For his claim against Willey, Schlueter alleges that Willey "used his position as an attorney to gain" his trust. He alleges that he believed that Willey would hold the $500,000 in the Willey O'Brien client trust account until Idea Catalyst procured

[1]In an affidavit filed in support of Willey and Willey O'Brien's motion for summary judgment, Willey stated that he wired the money from the Willey O'Brien client trust account to two individuals pursuant to Idea Catalyst's instructions.

the standby letter of credit. He alleges that Willey was the vice president of Idea Catalyst "creating a conflict of interest which in and of itself created a breach of his fiduciary duty." With respect to his claim against Willey O'Brien, he alleges that Willey was a partner and an agent of the law firm for purposes of the transaction. He alleges that Willey and Willey O'Brien breached fiduciary duties they owed to him by failing to keep the $500,000 in escrow and failing to return the $500,000 after Idea Catalyst failed to procure a standby letter of credit.

¶ 9 Willey and Willey O'Brien submitted Schlueter's claim to their professional liability insurance carrier, Minnesota Lawyers Mutual. Minnesota Lawyers Mutual denied the claim and refused to defend them in the lawsuit. Minnesota Lawyers Mutual maintained that the insuring agreement of the professional liability insurance policy provided no coverage for Schlueter's claim. The insuring agreement of the policy provided coverage to an "INSURED" for any claim that "results from the rendering of or failure to render PROFESSIONAL SERVICES." The policy defined "PROFESSIONAL SERVICES" as "legal or notary services provided to others, while engaged in the private practice of law *** including, but not limited to: *** (2) escrow agent."

¶ 10 Minnesota Lawyers Mutual also argued that a business enterprise exclusion contained within the policy excluded coverage. The business enterprise exclusion read as follows:

> "This policy does not afford coverage for the following:
>
> * * *

(3) any CLAIM arising out of PROFESSIONAL SERVICES rendered by any INSURED in connection with any business enterprise:

(a) owned in whole or in part;

(b) controlled directly or indirectly; or

(c) managed

by any INSURED, where the claimed DAMAGES resulted from conflicts of interest with the interest of any client or former client or with the interest of any person claiming an interest in the same or related business enterprise."

¶ 11 On February 27, 2014, Willey and Willey O'Brien filed the complaint at issue in the present case against Minnesota Lawyers Mutual alleging breach of contract and requesting a declaratory judgment that Minnesota Lawyers Mutual has a duty to defend them in Schlueter's pending lawsuit. Minnesota Lawyers Mutual filed a motion to have the parties' dispute determined under Iowa law. Willey and Willey O'Brien objected and argued that the dispute should be resolved under Illinois law. The trial court entered an order finding that Iowa law applies. On appeal, neither party challenges this ruling.

¶ 12 On July 30, 2015, in Schlueter's pending lawsuit, the circuit court ruled that Willey and Willey O'Brien owed a fiduciary duty to Schlueter but a fact question remained concerning "whether [Willey and Willey O'Brien] met their fiduciary duties under the circumstances" of that case.

¶ 13 In the present case, the parties then filed cross-motions for summary judgment on the issue of whether Minnesota Lawyers Mutual has a duty to defend the Schlueter

lawsuit. In an affidavit in support of Willey and Willey O'Brien's motion for summary judgment, Willey stated that he served as counsel for Idea Catalyst when he drafted the agreement between Idea Catalyst and Schlueter. He stated that he was not and had never been Schlueter's attorney and had never given him any legal advice. In their motion for summary judgment, Willey and Willey O'Brien argued that the professional service provided to Schlueter was an escrow agent service, which, they maintained, was covered under the policy's insuring agreement. They also argued that the business enterprise exclusion in the insurance policy did not apply because the exclusion applied only to conflicts of interests with clients, former clients, or persons claiming an interest in the same or related business enterprise. They argued that Schlueter did not fall into any of these categories.

¶ 14 On April 4, 2016, the circuit court entered an order granting Willey and Willey O'Brien's motion for summary judgment, finding that Minnesota Lawyers Mutual had a duty to defend Schlueter's claims. The court also denied Minnesota Lawyers Mutual's cross-motion for summary judgment. The court found that Minnesota Lawyers Mutual "breached its duty to provide [Willey and Willey O'Brien] a defense in the Schlueter litigation." The court ruled, "The specific claim made by Schlueter against [Willey and Willey O'Brien] that triggered [the duty to defend] was the claim [that Willey and Willey O'Brien] were negligent or breached a fiduciary duty while serving as an escrow agent holding Schlueter's funds in conjunction with Schlueter's contract with Idea Catalyst." The court stated, "Serving as an escrow agent is a professional service covered under the [Minnesota Lawyers Mutual] professional liability policy." The court also found that the

business enterprise exception does "not apply to the specific facts of this transaction and does not trigger a valid exclusion relieving [Minnesota Lawyers Mutual] of its duty to provide a defense to [Willey and Willey O'Brien] in the claims brought by Schlueter against them."

¶ 15 On September 23, 2016, the circuit court entered a final judgment on Willey and Willey O'Brien's complaint, awarding damages for Minnesota Lawyers Mutual's breach of contract. Minnesota Lawyers Mutual appeals from the circuit court's judgment and argues that Schlueter's claim is not covered under the insurance policy and, therefore, it has no duty to defend.

¶ 16 ANALYSIS

¶ 17 At the outset, we note that the circuit court determined that Iowa law applied with respect to the issue of whether Minnesota Lawyers Mutual owes a duty to defend under the insurance policy at issue. Minnesota Lawyers Mutual filed a motion to have Iowa law apply in this case. Willey and Willey O'Brien objected to the motion, arguing that Illinois law should apply. On appeal, Willey and Willey O'Brien do not raise any issue with respect to the circuit court's decision that Iowa law should apply. In their briefs, all of the parties cite Iowa law in support of their respective arguments. Accordingly, we will also apply Iowa substantive law in analyzing the issues presented on appeal. See *B.H. Smith, Inc. v. Zurich Insurance Co.*, 285 Ill. App. 3d 536, 538 (1996) ("Choice of law is not an issue before us on appeal. The parties agree that New York law governs this dispute. Therefore, we apply New York law to resolve this appeal."). With respect to procedural issues, however, we will apply Illinois law. *Belleville Toyota, Inc. v. Toyota Motor Sales,*

U.S.A., Inc., 199 Ill. 2d 325, 351 (2002) (procedural matters are governed by the laws of the forum state).

¶ 18 This case comes before us on an appeal from a summary judgment entered in favor of Willey and Willey O'Brien. A summary judgment is appropriate only "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2016). Our review of a lower court's summary judgment is *de novo*. *Morris v. Union Pacific R.R. Co.*, 2015 IL App (5th) 140622, ¶ 23.

¶ 19 Here, all parties filed motions for summary judgment, and the facts relevant to the motions are not disputed. The issue of whether to enter a summary judgment in favor of any of the parties centers on an interpretation of the language of the insurance policy at issue. Under Illinois law, the interpretation of an insurance policy and the coverage provided are questions of law that are appropriate for resolution through summary judgment. *Bituminous Casualty Corp. v. Iles*, 2013 IL App (5th) 120485, ¶ 19. Likewise, under Iowa law, the interpretation and construction of provisions of an insurance policy are generally questions of law that may be properly decided by summary judgment. *LeMars Mutual Insurance Co. v. Joffer*, 574 N.W.2d 303, 306-07 (Iowa 1998).

¶ 20 Under Iowa law, the "construction" of an insurance policy is the process of determining the policy's legal effect; the "interpretation" of a policy involves determining the meaning of the words used in the policy. *Nationwide Agri-Business Insurance Co. v. Goodwin*, 782 N.W.2d 465, 470 (Iowa 2010). Here, our task in this case

is to interpret the language of the insurance policy and construe the policy to determine whether, under Iowa law, Minnesota Lawyers Mutual has a duty to defend Willey and Willey O'Brien in the lawsuit filed by Schlueter.

¶ 21 Under Iowa law, "[i]nsurance coverage is a contractual matter" governed by the provisions set out in the policy. *Talen v. Employers Mutual Casualty Co.*, 703 N.W.2d 395, 402 (Iowa 2005). A cardinal principle of interpreting insurance contracts under Iowa law is that the intent of the parties controls the interpretation of the policy. *A.Y. McDonald Industries, Inc. v. Insurance Co. of North America*, 475 N.W.2d 607, 618 (Iowa 1991). Except in cases involving ambiguous terms, the intent of the parties is "determined by what the policy itself says." *Id*. If the policy is ambiguous, Iowa courts adopt the construction most favorable to the insured. *National Surety Corp. v. Westlake Investments, LLC*, 880 N.W.2d 724, 733-34 (Iowa 2016). "[W]here no ambiguity exists, [the courts] will not write a new policy to impose liability on the insurer." *Id*. at 734.

¶ 22 If a term is not defined in the policy, Iowa courts will give the term its ordinary meaning. *LeMars Mutual Insurance Co.*, 574 N.W.2d at 307. The Iowa courts determine the ordinary meaning of words from the standpoint of a reasonable ordinary person, not from the standpoint of a specialist or an expert. *National Surety Corp.*, 880 N.W.2d at 734.

¶ 23 The present case concerns an insurer's duty to defend. The Iowa supreme court has stated that an insurer's duty to defend is separate from and broader than its duty to indemnify. *A.Y. McDonald Industries, Inc.*, 475 N.W.2d at 627. The duty to defend arises "whenever there is potential or possible liability to indemnify the insured based on the

facts appearing at the outset of the case." *First Newton National Bank v. General Casualty Co. of Wisconsin*, 426 N.W.2d 618, 623 (Iowa 1988). "[T]he duty to defend rests solely on whether the petition contains any allegations that arguably or potentially bring the action within the policy coverage." *A.Y. McDonald Industries, Inc.*, 475 N.W.2d at 627. "If any claim alleged against the insured can rationally be said to fall within such coverage, the insurer must defend the entire action." *Id*. "In case of doubt as to whether the petition alleges a claim that is covered by the policy, the doubt is resolved in favor of the insured." *Id*. "The insurer has no duty to defend if after construing both the policy in question, the pleadings of the injured party and any other admissible and relevant facts in the record, it appears the claim made is not covered by the indemnity insurance contract." (Internal quotation marks omitted.) *Weber v. IMT Insurance Co.*, 462 N.W.2d 283, 285 (Iowa 1990).

¶ 24 "In deciding whether an insurer has a duty to defend, the first query is into plaintiff's pleadings to see if the pleadings state facts which bring the claim within the liability covered by the policy." *Chipokas v. Travelers Indemnity Co.*, 267 N.W.2d 393, 395 (Iowa 1978). Therefore, in the present case, we will first look to the allegations of Schlueter's complaint and compare them with the policy's insuring agreement and determine whether the breach of fiduciary claims alleged against Willey and Willey O'Brien can rationally be said to fall within such coverage.

¶ 25 Schlueter's complaint alleges that he entered into a contractual relationship with Idea Catalyst in which Idea Catalyst agreed to help facilitate a real estate transaction by securing a standby letter of credit. The contract language provided for fees to Idea

Catalyst, including a $500,000 payment that Schlueter was required to wire to Willey O'Brien's client trust account upon execution of the agreement. Willey signed the contract on behalf of Idea Catalyst as the vice president or manager of Idea Catalyst. Schlueter alleged in his complaint that Willey used his position as an attorney to gain his trust, that he believed that Willey would hold the $500,000 in the law firm's trust account until such time as Idea Catalyst procured the standby letter of credit, and that Willey breached the fiduciary duty he owed to him by disbursing the funds from his trust account before Idea Catalyst fulfilled its obligations under the contract. He alleged that Willey was an agent of Willey O'Brien "at all relevant times."

¶ 26 In reviewing Schlueter's complaint for determining whether Minnesota Lawyers Mutual has a duty to defend, an initial issue that must be determined is what relationship has Schlueter alleged between himself and Willey that created the alleged fiduciary duty. In its brief, Minnesota Lawyers Mutual argues that Schlueter alleges that Willey served as his attorney in the transaction. Willey and Willey O'Brien, however, maintain that Schlueter has not alleged the existence of an attorney-client relationship. They note that Schlueter makes no allegations that he entered into an attorney fee contract with or sought legal advice from Willey. Instead, Willey and Willey O'Brien maintain that Schlueter's claim against them is based on Willey serving as (1) the attorney for Idea Catalyst in preparing the contract and (2) an escrow agent for both Idea Catalyst and Schlueter when Schlueter wired the $500,000 payment into the Willey O'Brien client trust account.

¶ 27 We agree with Willey and Willey O'Brien that Schlueter does not allege a claim based on an attorney-client relationship. Under Iowa law, a party attempting to establish an attorney-client relationship must prove: (1) a person sought advice or assistance from an attorney, (2) the advice or assistance sought pertained to matters within the attorney's professional competence, and (3) the attorney expressly or impliedly agreed to give or actually gave the desired advice or assistance. *Steinbach v. Meyer*, 412 N.W.2d 917, 918 (Iowa Ct. App. 1987). Here, Schlueter has not alleged any facts to establish an attorney-client relationship with Willey. He does not allege that he sought professional legal advice from Willey, and Willey's affidavit in support of the motion for summary judgment alleges that he never gave Schlueter any legal advice and never served as his attorney.

¶ 28 In the proceedings below, the circuit court found that "[t]he specific claim made by Schlueter against [Willey and Willey O'Brien] that triggered a duty for [Minnesota Lawyers Mutual] to provide a defense was the claim [that Willey and Willey O'Brien] were negligent or breached a fiduciary duty while serving as an *escrow agent* holding Schlueter's funds in conjunction with Schlueter's contract with Idea Catalyst." (Emphasis added.) We agree with the circuit court's analysis of Schlueter's claim. Schlueter's claim is based on a fiduciary duty arising from the escrow of $500,000, not an attorney-client relationship. A fiduciary duty owed by an attorney serving as an escrow agent is separate and distinct from the fiduciary duty that an attorney owes to his clients.

¶ 29 For example, Rule 32:1.15 of the Iowa Rules of Professional Conduct concerns requirements for Iowa attorneys with respect to the safekeeping of their clients' or third

persons' property while rendering legal services. Iowa R. Prof'l Conduct R. 32:1.15 (eff. July 1, 2005). With respect to situations where a lawyer serves only as an escrow agent, the comment to Rule 32:1.15 explains:

> "[A] lawyer who serves only as an escrow agent is governed by the applicable law relating to fiduciaries even though the lawyer does not render legal services in the transaction and is not governed by this rule."

Under Iowa law, a lawyer who serves as an escrow agent is the agent of all parties to an escrow. *Youngblut v. Wilson*, 294 N.W.2d 813, 817 (Iowa 1980). See also *Robertson v. ADJ Partnership, Ltd.*, 204 S.W.3d 484, 491 (Tex. Ct. App. 2006) (discussing differences between the fiduciary duties owed by a person providing legal services and the fiduciary duties owed by a person acting as an escrow agent). Schlueter alleges that Willey and Willey O'Brien breached a fiduciary duty they owed as an escrow agent.

¶ 30 In its brief, Minnesota Lawyers Mutual maintains that "if Willey was not in fact acting as Schlueter's attorney when providing escrow services, such services would not fall within the Policy's insuring agreement, which provides coverage for claims arising from the rendering of professional services to others while engaging in the private practice of law." We disagree.

¶ 31 The insuring agreement of the insurance policy provides coverage if Schlueter's claim "results from the rendering of or failure to render PROFESSIONAL SERVICES." The policy broadly defines the term "PROFESSIONAL SERVICES" as "legal or notary services provided to others, while engaged in the practice of law." It then itemizes a list of specific services that are included within the broader definition by using the language

"including, but not limited to" and then listing "escrow agent" as a specific service included within the definition. Therefore, we believe that under the plain and ordinary meaning of the language of the insuring agreement, services rendered by Willey and Willey O'Brien as "escrow agent" in the present case qualify as "PROFESSIONAL SERVICES" under the policy's coverage. Here, Schlueter's claims against Willey and Willey O'Brien are based on escrow agent services provided by Willey while also providing legal representation to Idea Catalyst during the transaction. Schlueter's allegations, therefore, fall squarely within the policy's insuring agreement for claims resulting from the rendering of or the failure to render professional services.

¶ 32 *Saad v. Rodriguez*, 506 N.E.2d 1230, 1233-34 (Ohio Ct. App. 1986), is instructive in our analysis. In that case, the court explained that, in real estate transactions, an attorney and his firm may act in the dual capacity as attorneys for one of the parties and as escrow agent for both parties. The attorney represents only one party to the agreement and is a fiduciary agent of his client based on the attorney-client relationship. *Id*. As an escrow agent for both parties, however, the attorney also owes a separate fiduciary duty to both parties arising from the escrow agent relationship. *Id.* The two positions, attorney and escrow agent, are distinct and mutually exclusive. *Id*. at 1233.

¶ 33 Here, Willey rendered legal services to Idea Catalyst by preparing the contract on behalf of Idea Catalyst. Willey and his firm owed a fiduciary duty to Idea Catalyst arising out of this attorney-client relationship. Under the terms of the contract prepared by Willey, Schlueter wired $500,000 into Willey O'Brien's client trust account. By doing so, Willey and Willey O'Brien acted in the dual capacity as counsel for Idea Catalyst and

escrow agent for both parties. As an escrow agent, Willey and Willey O'Brien owed a fiduciary duty to Schlueter that was separate and distinct from the fiduciary duty they owed to Idea Catalyst as their client. Under the policy's insuring agreement, these professional services rendered (or failed to render) as an escrow agent fall within the policy's coverage.

¶ 34 Minnesota Lawyers Mutual argues, alternatively, that if Schlueter's claim falls within the coverage of the policy's insuring agreement, then the claim is excluded under the business enterprise exclusion contained within the policy. The business enterprise exclusion contained within the policy reads as follows:

> "This policy does not afford coverage for the following:
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> * * *
>
> (3) any CLAIM arising out of PROFESSIONAL SERVICES rendered by any INSURED in connection with any business enterprise:
>
> (a) owned in whole or in part;
>
> (b) controlled directly or indirectly; or
>
> (c) managed
>
> by any INSURED, where the claimed DAMAGES resulted from conflicts of interest with the interest of any client or former client or with the interest of any person claiming an interest in the same or related business enterprise."

¶ 35 As noted above, we conclude that the trial court correctly determined that Schlueter's claim arises out of the rendering of or failure to render "professional

services" as that term is defined in the policy's insuring agreement. Therefore, Schlueter's claim meets the first requirement of the exclusion. Also, Willey signed the contract on behalf of Idea Catalyst as either its vice president or its manager. Therefore, Schlueter's claim meets the second requirement that the claim involve professional services rendered in connection with a business enterprise that is controlled, directly or indirectly, or managed by an insured. On appeal, the parties do not dispute that Schlueter's claim meets these two requirements of the exclusion.

¶ 36 The third requirement of the exclusion, however, requires that Schlueter's claimed damages resulted from conflicts of interest between the insured and the interests "of any client or former client or with the interest of any person claiming an interest in the same or related business enterprise." In support of its argument that Schlueter's claim meets this third requirement of the exclusion, Minnesota Lawyers Mutual cites an unpublished decision of the United States Court of Appeals, *Minnesota Lawyers Mutual Insurance Co. v. Antonelli, Terry, Stout & Kraus, LLP*, 472 Fed. Appx. 219 (4th Cir. 2012). *Antonelli* involved the interpretation of the same business enterprise exclusion that is at issue in the present case. However, we find the facts of *Antonelli* to be distinguishable.

¶ 37 In *Antonelli*, the attorneys were hired by a company (Telefind) to perform patent prosecutions on its behalf. *Id.* at 221. Telefind was founded by an inventor and entrepreneur, Andrew Andros, to develop and market wireless e-mail technology (WET). *Id*. Over time, the attorneys became equity investors in Telefind and became involved in managing the company's strategy and operations. *Id*. Another group of investors (Richards Investors) lent money to Telefind through another corporation (Flatt Morris)

with a loan convertible to equity. *Id*. Over time, the attorneys also acquired a majority equity share of Flatt Morris. *Id.*

¶ 38 In a transaction to lease computers, Telefind provided another company, Leaco, a security interest in the WET patents. *Id*. Telefind fell behind on its payments to Leaco, and Leaco sued Telefind. *Id*. The attorneys advised Andros and the Richards Investors to place the WET patents in a separate legal entity so they would not lose their interest in the intellectual property in the Leaco lawsuit. *Id*. The attorneys assured Andros and the Richards Investors that they would continue to participate in any benefits associated with the patents. *Id.* Based on attorneys' assurances, Andros and the Richards Investors disavowed their legal interests in the patents, and the attorneys created a shell corporation (NTP) to hold the WET patents. *Id*. Leaco eventually obtained a judgment against Telefind, and the attorneys scheme successfully prevented Leaco from obtaining any share of the WET patents. *Id*.

¶ 39 Subsequently, Andros passed away, and NTP filed a patent infringement lawsuit against another company that settled for $612.5 million. *Id*. When Andros's surviving family members and the Richards Investors contacted the attorneys about their share of the settlement, the attorneys denied the existence of any arrangement with them and refused to share the settlement. *Id*. at 222. Andros's family and the Richards Investors then sued the attorneys, and the attorneys submitted the claim to their professional liability insurance carrier, Minnesota Lawyers Mutual. *Id.*

¶ 40 The lower court found that the business enterprise exception contained within the policy (the same exception at issue in the present case) applied. *Id*. The attorneys

appealed. *Id*. The *Antonelli* court construed the exclusion at issue under Virginia law. *Id*. at 223. The court stated that there was no dispute that the case involved professional services that the attorneys provided to Andros and the Richards Investors; they counseled them to renounce their interest in the WET patents. *Id*. The court also held that the services were rendered "in connection with [a] business enterprise." *Id*. The court stated, "although the phrase 'business enterprise' is not defined by the policy, there can be little dispute that it encompasses the various corporations involved here—Telefind, Flatt Morris, and NTP." *Id*. The court held that attorneys clearly owned, controlled, or managed at least Flatt Morris and NTP. *Id.* Finally, the court held that the claims against the attorneys resulted from conflicts of interest because the attorneys allegedly obtained complete ownership and control of their clients' assets and exploited those assets for personal benefit. *Id.*

¶ 41 The facts of *Antonelli* are distinguishable from the present case. In *Antonelli*, the court held that the claim in that case "surely resulted 'from conflicts of interest' " because the attorneys "allegedly obtained complete ownership and control of their *clients*' assets and exploited those assets for personal benefit." (Emphasis added.) *Id*. The court found that the alleged conduct violated "any number of Virginia professional ethics rules," specifically various subsections of Rule 1.8 of the Virginia Rules of Professional Conduct that address conflicts of interest and prohibited transactions between attorneys and their clients. *Id.* at 223-24; Va. R. Prof'l Conduct R. 1.8 (eff. Jan. 1, 2004).

¶ 42 In the present case, there are no allegations that Willey or Willey O'Brien ever had an attorney-client relationship with Schlueter. As noted above, an attorney-client

relationship involves a person seeking legal advice from a lawyer. *Steinbach*, 412 N.W.2d at 918. Here, Schlueter does not allege that he sought legal advice from Willey or allege any other facts that could arguably establish that there is or was an attorney-client relationship between him and Willey or Willey O'Brien. Accordingly, Schlueter does not qualify as a client or former client of an insured under the language of the exclusion as did the claimants in *Antonelli*. See also *Lucas v. Lalime*, 998 F. Supp. 263, 268 (W.D.N.Y. 1998) ("Mere deposit of funds into an attorney's escrow or trust account is not sufficient to establish the requisite attorney-client relationship."); *Moore v. Weinberg*, 681 S.E.2d 875, 878 (S.C. 2009) ("the [fiduciary] duty arises from an attorney's role as an escrow agent and is independent of an attorney's status as a lawyer and distinct from duties that arise out of the attorney/client relationship."). Therefore, unlike the facts of *Antonelli*, Schlueter's claim does not involve alleged violations of Iowa's or Illinois' professional ethics rules concerning conflicts of interests between attorneys and their clients.

¶ 43 Citing *Antonelli*, Minnesota Lawyers Mutual also argues that the business enterprise exclusion applies because the claimed damages resulted from conflicts of interest of the insured "*with the interest of any person claiming an interest in the same or related business enterprise*." (Emphasis added.) It argues that, even if Schlueter is not a client or former client, his claim falls within this language of the exclusion. We disagree.

¶ 44 We note that Schlueter does not claim an interest in the business enterprise at issue. He does not allege that he has any interest in Idea Catalyst or any other company managed or controlled by Willey. Instead, he alleges that he entered into a contract for

services with Idea Catalyst. A person entering into a contract for services with a company does not have an "interest in" the company under the plain and ordinary meaning of that phrase. Schlueter's claim, therefore, is not comparable to the facts in *Antonelli* where the claimants had an interest in three corporations owned, controlled, or managed by the attorneys.

¶ 45 Minnesota Lawyers Mutual argues that "the financing arrangement between Schlueter and Idea Catalyst may be considered a business enterprise in and of itself, controlled at least in part by Willey, and in which Schlueter claimed an interest." Therefore, Minnesota Lawyers Mutual argues, the contract between Idea Catalyst and Schlueter constitutes a "related business enterprise" in which Schlueter claims an interest.

¶ 46 The policy does not define the term "related business enterprise." However, regardless of whether the contract between Schlueter and Idea Catalyst qualifies as a "related business enterprise" in which Schlueter is "claiming an interest," the exclusion, nonetheless, requires that the claimed damages "resulted from conflicts of interests." The circuit court found, and we agree, that Schlueter's claimed damages were not the result of conflicts of interest. Willey's role as an escrow agent did not conflict with Schlueter's interests in the Idea Catalyst transaction.

¶ 47 "It has now become the settled rule in most jurisdictions that a general agent of the grantee, obligee, or payee of an instrument is not incapacitated from acting as depositary of the instrument, but becomes the agent of both parties for the purposes of the escrow." (Internal quotation marks omitted.) *Gronewold v. Gronewold*, 304 Ill. 11, 16 (1922). See also *Egnotovich v. Katten Muchin Zavis & Roseman LLP*, No. 604101/06, 2008 WL

199757, at *9 ("It is not a conflict of interest for an attorney for one party in a transaction to hold the other party's money in escrow in connection with the transaction. This happens literally every day [citation]."); *Henry v. Hutchins*, 178 N.W. 807, 809 (Minn. 1920) ("In accepting the documents in escrow Bennett became the agent of both the parties, and was bound in good faith to carry out their agreement in the matter. The fact that Bennett was the agent of Hutchins, if he was such, did not preclude the parties from the right to select him as custodian of the papers."); *Mantel v. Landau*, 34 A.2d 638, 639 (N.J. Ch. 1943) ("The parties may select as depositary a person who has been, or still is, the attorney of one of them. He received the deposit, however, not as such attorney, but as the agent or trustee for both parties."); *Saad*, 506 N.E.2d at 1233 (in real estate transactions, an attorney and his firm may act in the dual capacity as attorneys for one of the parties and as escrow agent for both parties).

¶ 48 In the present case, the agreement between Schlueter and Idea Catalyst required Schlueter to wire $500,000 into the Willey O'Brien client trust account. When Willey and Willey O'Brien received the deposit into their client trust account, they became an agent for both parties with respect to the escrowed funds and owed Schlueter a fiduciary duty as an escrow agent. Nothing within the record establishes that Willey's role as an escrow agent for the transaction was antagonistic to Idea Catalyst's interests as his client or otherwise created a conflict of interest with Schlueter's interest in the transaction.

¶ 49 Schlueter's complaint alleges that Idea Catalyst was obligated to secure the standby letter of credit as a condition for the release of the escrowed funds; that Idea Catalyst failed to perform; that Schlueter, therefore, is entitled to the return of the

escrowed funds; and that Willey and Willey O'Brien have breached their fiduciary duties under the escrow by failing to return the funds and releasing them to third parties. Under these alleged facts, Schlueter's claimed damages are not the result of conflicts of interest but are the result of Willey and Willey O'Brien's failure to fulfill their obligations as an escrow agent.

¶ 50 Under Iowa law, the insurer must defend the entire action if any claim alleged against the insured can rationally be said to fall within policy's coverage. *A.Y. McDonald Industries, Inc.*, 475 N.W.2d at 627. Based on the above analysis, it can be rationally said that Schlueter alleges a claim against Willey and Willey O'Brien for a breach of fiduciary duty for refusing to return escrowed funds and that these claimed damages are not the result of conflicts of interest.

¶ 51 It is the insurer's duty to define any limitations or exclusions in clear and explicit terms. *Hornick v. Owners Insurance Co.*, 511 N.W.2d 370, 374 (Iowa 1993). "Thus, when an exclusionary provision is fairly susceptible to two reasonable constructions, the construction most favorable to the insured will be adopted." *Thomas v. Progressive Casualty Insurance Co.*, 749 N.W.2d 678, 682 (Iowa 2008). "If exclusionary language is not defined in the policy, we give the words their ordinary meaning." *Farm & City Insurance Co. v. Gilmore*, 539 N.W.2d 154, 157 (Iowa 1995). "An exclusion that is clear and unambiguous must be given effect." *Id*. Here, for the exclusion to apply, the claimed damages must result from conflicts of interest.

¶ 52 Although Schlueter alleges in his complaint that "Willey[ ] was also the Vice President of [Idea Catalyst] creating a conflict of interest which in and of itself created a

breach of his fiduciary duty to the Plaintiff," we do not believe this allegation is controlling in our analysis because Schlueter also alleges that Willey "released [the escrowed funds] to other parties not even party to the contract, in violation of the contract and in violation of his fiduciary duty to the Plaintiff." Schlueter, therefore, alleges that Willey and Willey O'Brien breached their obligations as an escrow agent separate and apart from any alleged conflicts of interest resulting from Willey serving as Idea Catalyst's vice president. We agree with the circuit court that Willey's role as an escrow agent did not conflict with his role as an attorney for Idea Catalyst.

¶ 53 Because Schlueter alleges claims against Willey and Willey O'Brien for breach of fiduciary duties apart from any conflicts of interests, the business enterprise exclusion does not relieve Minnesota Lawyers Mutual from its obligation to defend the lawsuit. Also, we need not separately determine whether the contract between Schlueter and Idea Catalyst qualifies as a "related business enterprise" under the terms of the exclusion.

¶ 54 Minnesota Lawyers Mutual also cites *Coregis Insurance Co. v. LaRocca*, 80 F. Supp. 2d 452 (E.D. Pa. 1999), in support of its argument that the business enterprise exclusion applies. In that case, however, the language of the business enterprise exclusion was much broader than the language of the exclusion here. In *Coregis Insurance Co.*, the policy excluded " 'any CLAIM arising out of or in connection with the conduct of any business enterprise other than the NAMED INSURED *** which is owned by an INSURED or in which any INSURED is a partner, or which is directly or indirectly controlled, operated or managed by any INSURED either individually or in a fiduciary capacity.' " *Id*. at 454. The exclusion in that case did not require the element of "conflicts

of interest" which is required in the exclusion in the present case. Accordingly, *Coregis Insurance Co.* is not persuasive.

¶ 55 Based on the above analysis, we conclude that Schlueter's claims against Willey and Willey O'Brien can be rationally said to fall within the coverage of the professional liability insurance policy issued by Minnesota Lawyers Mutual. Therefore, the circuit court correctly held that Minnesota Lawyers Mutual has a duty to defend Willey and Willey O'Brien in Schlueter's pending lawsuit. Accordingly, we affirm the circuit court's judgment entered in favor of Willey and Willey O'Brien.

¶ 56 CONCLUSION

¶ 57 For the foregoing reasons, we affirm the circuit court's judgment.

¶ 58 Affirmed.