

Third Circuit Affirms That There Is No Coverage for "Kids-for-Cash" Case

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The United States Court of Appeals for the Third Circuit, applying Pennsylvania law, has held that two insurers have no duty to defend or indemnify insureds in a lawsuit alleging that the insureds bribed state court judges to send juvenile defendants to detention centers owned and operated by the insureds. *Colony Ins. Co. v. Mid-Atlantic Youth Servs. Corp., et al.*, 2012 WL 2354435 (3d Cir. June 21, 2012). Wiley Rein represented one of the insurers.

The insureds, a company and its owner that managed juvenile detention facilities, sought coverage under general liability policies for underlying class and individual lawsuits alleging that the insureds participated in a scheme to bribe state court judges to send juvenile defendants to the insureds' detention centers. The insurers filed declaratory judgment actions, contending that they had no duty to defend or indemnify the insureds for the underlying suits. The district court granted the insurers' motions for summary judgment, and the insureds appealed.

Affirming the district court's decision, the Third Circuit first held that there was no coverage because the underlying complaints contained factual allegations of intentional acts, notwithstanding a few assertions of "recklessness" that the court determined were insufficient to give rise to alleged negligence. The court further concluded that because the complaint alleged that the insured engaged in deliberate efforts to initiate and perpetuate the kick-back scheme, there was no "accident" and thus no covered "occurrence" within the meaning of the policies. In so holding, the court rejected the insureds' argument that the policies provide coverage because there was no allegation that the insureds intended to cause bodily injury.

Finally, the court held that policy exclusions otherwise barred coverage. One of those exclusions barred coverage for injury "caused by or at the direction of the insureds with the knowledge that the act would violate the rights of another." According to the court, that exclusion precluded coverage because the complaint alleged that the insureds participated in the conspiracy knowing that juveniles' detention had been procured through violation of their constitutional rights. The court also held that a willful violation of statute exclusion barred coverage, noting that the underlying complaint alleged criminal conduct, including instances of wire fraud, conspiracy and other criminal acts.