

## **No Duty to Defend Insured Involved in ‘Kids for Cash’ Scheme**

### ***Insurance Law Update***

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*U.S. District Court for the Middle District of Pennsylvania*

In *Travelers Property Cas. Co. of America v. Mericle*, 2010 WL 3505117 (M.D.Pa. Aug. 31, 2010) the district court ruled that Travelers had no duty to defend because its insured violated the terms of the policy by willfully breaking the law when it cooperated with two judges in an illegal “kids for cash” scheme.

Travelers provided both primary and commercial excess coverage to Mericle Construction, Inc. from January 1, 2000 to January 1, 2010. Mericle conspired with two County Court judges and others to intentionally overpopulate the county’s juvenile jail to make the construction of a new juvenile jail appear necessary. Mericle paid the judges about \$2.8 million. The underlying actions were all consolidated into either *Wallace v. Powell*, No. 3:09-cv-0286, 2009 WL 4051974 (M.D. Pa. Nov. 20, 2009) or *Clark v. Conahan*, No. 3:09-cv-2535, slip op. at 1-7 (M.D. Pa. Aug. 25, 2010). These underlying actions alleged violations of the plaintiffs’ Fifth, Sixth, Eighth, and Fourteenth Amendments, multiple violations of the RICO statute, and various torts. In *Wallace*, the court dismissed the plaintiffs’ claims on the reasoning that the defendant judges are immune from suit, despite their egregious conduct. Numerous defense motions filed in *Clark* were denied in part and granted in part, and thus the defendants were partially successful with their judicial immunity defense.

The court analyzed multiple theories of potential coverage. The court determined that based on the plain language in the policies, none of the allegations in the underlying suits “suggest that Mericle or Mericle Construction were negligent in any way. As such, the ‘bodily injury’ caused by Mericle and Mericle Construction was not accidental, and therefore, was not caused by an ‘occurrence’ . . . . Thus, there is no duty to defend Mericle . . . .” The court also held that Travelers owed no duty to defend for personal injury “because the allegations in the underlying case [did] not ‘arise’ out of a claim for false imprisonment.” Finally, the court ruled that the “knowing violations of rights of another” and the “willful violation of a penal statute” exclusions in the policies applied to bar coverage.

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