



By
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Attempting To Escape

Insight: Bribing judges to place juvenile offenders in privately run jails isn't insured.

The policyholder argued he didn't intend to injure the young detainees.

Must an insurer cover injuries arising from bribes? Mericle Construction built and owned private prisons for juveniles. To be sure that the prisons were needed and occupied, owner Robert Mericle bribed judges. The judges then issued harsh sentences. After the scheme was uncovered, the juveniles sued Mericle.

Mericle demanded coverage under his commercial general liability policy.

Despite the seeming absence of coverage, this case, *Travelers Property Casualty Co. v. Mericle*, made it to the 3rd U.S. Circuit Court of

Appeals. The 3rd Circuit found several reasons to conclude that the claim couldn't be covered.

First, the policyholder

tried to characterize the suit as a negligence claim. The policyholder focused on allegations about what the insured "knew or should have known." The policyholder argued that this allegation was consistent with a negligence claim. But the court reasoned that it "must look at the factual allegations and not the particular cause of action that is pled." Then the court noted that the factual allegations all involved intentional conduct, and the policy had a specific exclusion for injuries that were intended by the insured.

Second, the court noted the familiar "occurrence" concept: Coverage was limited to "an accident, including continuous or repeated exposure to substantially the same general harmful conditions." The policyholder tried to separate his intent to act from his intent

to injure, and argued that there was no intent to cause the injury. The court rejected this argument and found that the injuries "were a natural consequence" of the acts. There was no occurrence.

Mericle also sought coverage under a provision that included false imprisonment. But that provision was subject to two important exclusions.

This coverage was subject to an exclusion for injuries "arising out of the willful violation of a penal statute." Again, the insured tried to separate the act from the injury; he argued that violating the statute did not cause the injury. But the court was unwilling to separate the violation from the injury. The court found that the criminal acts were causally linked to the juveniles' injuries.

This coverage was also subject to an exclusion for the knowing violation of another person's rights. The policyholder asked that his acts be viewed narrowly. He argued that he directed bribes, but he didn't direct anyone to violate peoples' rights. Again, the court refused to separate acts from injuries. The insured was "part of a conspiracy in which juveniles were committed to facilities with the knowledge their detention had been procured by violating their constitutional rights." The court applied the exclusion.

Finally, the court noted a knowing violation of rights exclusion.

Ultimately, the negligence and occurrence analyses are the most important parts of the case because this reasoning is likely to apply in other contexts. First, in reviewing a complaint, the court must focus on the specific facts alleged. Second, when considering the occurrence issue, intent to act cannot be separated from intent to injure in circumstances where the injury is the "natural consequence" of the act. BR

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