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Juvenile Detention Facility's Insurer Has No Duty to Defend 'Kids-for-Cash' Suits, Says Judge

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09-29-2010

Gregory Zappala, the owner of the juvenile detention facility at the heart of the "kids-for-cash" judicial corruption scandal in Luzerne County, suffered a setback this week when a federal judge ruled that his insurer has no duty to defend him in a spate of civil suits.

Prosecutors have never charged Zappala with any wrongdoing, but [the civil suits](#) allege that he was part of a RICO conspiracy and was aware that kickbacks were being paid by his former partner to judges in order to guarantee that a steady stream of youths would be sent to a juvenile detention facility owned by Zappala's company.

Zappala, the owner of Mid-Atlantic Youth Services, has argued in court papers that he never knew that former MAYS co-owner Robert Powell paid kickbacks to former Judges Mark A. Ciavarella Jr. and Michael T. Conahan.

As a result, Zappala argued that General Star Indemnity Co. should be ordered to continue funding his defense of the civil suits because it is too early to say whether the policy exclusions would apply. Zappala was also seeking a ruling that the \$1 million policy, in place for several years, should be deemed to provide up to \$3 million in coverage in the Luzerne cases.

Now U.S. District Judge A. Richard Caputo has ruled in favor of the insurer, declaring that Zappala's claimed lack of knowledge and involvement is irrelevant because Powell's confession alone is enough to trigger the policy exclusion.

Powell, who has pleaded guilty to failing to report a felony to federal authorities and with being an accessory after the fact to a tax conspiracy, told the government that he "felt the judges 'had him over a barrel,'" and caved in to their demands, according to court documents.

The "statement of offense conduct" in Powell's criminal case said that Powell paid Ciavarella and Conahan \$772,500, "often disguising the payments as 'rental fees'" for docking his boat at the judges' condominium in Florida. He also allowed more than \$2 million to be passed through his bank accounts in connection with a "finders fee" that the detention center's builder, Robert Mericle, paid the judges.

Mericle pleaded guilty in August 2009 to failing to disclose knowledge of a crime.

In the insurance litigation, Zappala's lawyer, Bernard M. Schneider of Brucker Schneider & Porter in Pittsburgh, argued that none of the documents in either the civil or criminal cases "as much as hints that Zappala or MAYS knew about or was involved in Mericle and Powell's alleged conduct."

Schneider urged Caputo not to apply exclusions for "criminal acts" and "knowing violations of the rights of others."

Instead, Schneider urged the judge to hold that it would be premature to decide those issues, and to declare instead that General Star has a duty for now to continue providing a defense for claims of bodily injury and professional liability.

But the insurer's lawyers -- Marianne J. Gilmartin and Christopher N. Kelly of Stevens & Lee in Scranton -- argued coverage is properly denied whenever one of the named insureds triggers an exclusion.

Powell's guilty plea, they argued, effectively bars coverage for Powell, Zappala and MAYS.

"Powell's admitted payment of kickbacks to the judges and concerted efforts to conceal those payments were criminal, malicious, dishonest or fraudulent acts that led to the Luzerne County litigation, triggering the criminal acts exclusion and barring coverage for all three defendants," Gilmartin and Kelly wrote in their brief.

Now Caputo has ruled that the insurer's argument is a winning one.

"Courts in Pennsylvania have broadly applied these exclusions to both criminally liable parties and non-criminal co-insureds in cases where the 'any insured' language has been found," Caputo wrote.

"The underlying suits are based on a judicial kickback scheme masterminded by defendant Powell. As a result, his criminal conduct, as an insured, means that the criminal act exclusion precludes coverage for all defendants," Caputo wrote.

Caputo also sided with the insurer's argument that a judicial kickback scheme can never be considered "negligent" and that Zappala therefore cannot invoke the negligence-based bodily injury coverage in his policy.

The lawsuits, Caputo noted, "allege that both defendant MAYS, defendant Zappala, and defendant Powell committed intentional acts, not that they were negligent," Caputo wrote.

"Thus, the allegations in the underlying complaints were not the result of an 'occurrence' as defined by the policy at bar or the case law in this circuit," Caputo wrote.

Neither Schneider nor Gilmartin could be reached for comment.

Conahan and Mark A. Ciavarella were charged in February 2009 with a 48-count racketeering indictment that included charges of honest services fraud for allegedly taking more than \$2.8 million in payments from Mericle and Powell.

Conahan has since [pleaded guilty](#) to one count of racketeering, but Ciavarella has maintained his innocence.