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District Court Weighs in on Insurer's Obligations Under Florida Law When Insured's Liability Is Not Clear

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The District Court's opinion in *Kinsale Insurance Co. v. Pride of St. Lucie Lodge 1189, Inc.*, Case No. 2:21-cv-14053, 2022 U.S. Dist. LEXIS 127224 (S.D. Fla. July 14, 2022) provides guidance as to an insurance company's obligations when the insured's liability is not clear. That case arises from a fatal shooting in the parking lot of an event space. Pride of St. Lucie Lodge 1189, Inc. ("the Lodge") operates a clubhouse for a fraternal organization that hosted the event. The Lodge was insured under a general liability policy issued by Kinsale, which limited coverage for claims arising out of an assault or battery to a $50,000 sublimit. After receiving a letter of representation from the victim's attorney, Kinsale contacted the independent claims adjuster retained by a co-carrier to investigate the incident at the Lodge. The independent claims adjuster conducted an investigation and eventually reported that he did not see any liability for the Lodge and did not believe the victim had a case against the Lodge. The shooting victim eventually died as a result of her injuries, and, nearly one year after the shooting incident, her Estate filed suit against the Lodge for negligent security. When it received the lawsuit, Kinsale immediately tendered its $50,000 assault and battery sublimit to the Estate. The Estate rejected Kinsale's settlement offer and the case proceeded to trial, which resulted in a $3.5 million judgment against the Lodge.

In the subsequent bad faith action, the Estate and the Lodge argued that Kinsale breached its duty of good faith by filing to timely tender the $50,000 sublimit. The dispositive question on summary judgment was whether Kinsale breached its duty of good faith to settle the claims when its insured's liability was never clear. In its summary judgment order, the District Court explained that Florida courts have traditionally held an insurance company is not liable for bad faith failure to settle if an offer to settle within policy limits was never communicated to the insurer. In *Powell v. Prudential Property & Cas. Ins. Co.*, 584 So. 2d 12 (Fla. 3d DCA 1991), the Third District Court of Appeals recognized an exception to the traditional settlement demand requirement for bad faith cases. *Powell* imposes an affirmative duty upon the insurer to initiate settlement negotiations where the insured's liability is clear and the injuries are so serious that a judgment in excess of the policy limits is likely. Accordingly, the District Court reasoned that the only way Kinsale could have acted in bad faith is if it had an affirmative duty to initiate settlement negotiations under *Powell*; however, the holding in *Powell* establishes an affirmative duty to initiate settlement negotiations only where liability is clear. Because the undisputed facts established that the Lodge's liability was never clear, the District Court determined that no reasonable jury could conclude that Kinsale acted in bad faith in handling the Lodge's claim.

The Eleventh Circuit is now tasked with resolving this issue, as the Estate and the Lodge have appealed the District Court's summary judgment order. Although not cited by the District Court, there are several federal cases, applying Florida law, that support its conclusion that an insurer does not commit bad faith by failing to initiate settlement negotiations or timely tender policy limits when the insured's liability is not clear. *Shin Crest PTE, Ltd. v. AIU Ins. Co.*, 605 F. Supp. 2d 1234 (M.D. Fla. 2009) (*aff'd* 368 Fed. Appx. 14 (11th Cir. 2010); *Welford v. Liberty Insurance Corporation*, 190 F. Supp. 3d 1085 (N.D. Fla. 2016) (*aff'd* 713 Fed. Appx. 969 (11th Cir. 2017).

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