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Eleventh Circuit Reverses District Court's Summary Judgment Order in Favor of Insurer in Bad Faith Failure to Timely Tender Action

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In *Kinsale Insurance Co. v. Pride of St. Lucie Lodge 1189, Inc.*, 135 F. 4th 961 (11th Cir. 2025), the Eleventh Circuit reversed the District Court's grant of summary judgment in favor of the insurer. At issue was Florida's *Powell* doctrine, which states that an insurer has an affirmative duty to initiate settlement negotiations with a claimant "[w]here liability is clear, and injuries so serious that a judgment in excess of the policy limits is likely[.]" *Powell v. Prudential Property & Cas. Ins. Co.*, 584 So. 2d 12 (Fla. 3d DCA 1991).

The bad faith action arises from a fatal shooting in the parking lot of the insured's premises. On the night in question, two groups of patrons became involved in a fight inside the insured's club and were removed by security personnel by way of separate exits. The groups reconvened the fight in the insured's back parking lot, which culminated in the shooting of an individual involved in the altercation. Eight months after the shooting, Kinsale learned about the incident and commenced an investigation. Kinsale also contacted the independent claims adjuster retained by a co-carrier to investigate the incident. Kinsale and the independent claims adjuster discovered facts which, according to them, painted an unclear picture as to whether the insured was liable for the incident. Nearly one year after the shooting, the victim's estate filed suit against the insured for negligent security. Within one week of receiving the lawsuit, Kinsale tendered its $50,000 assault and battery sublimit to the estate. The estate rejected the tender and the case proceeded to trial, resulting in a $3.5 million judgment against the insured.

In the subsequent bad faith action, the estate and the insured argued that Kinsale breached its duty of good faith by failing to timely tender the $50,000 sublimit. According to them, Kinsale had an affirmative duty to tender the sublimit before the estate filed suit. Citing *Powell*, the District Court entered summary judgment in favor of the insurer, finding no reasonable jury could conclude Kinsale acted in bad faith in handing the claim because the undisputed facts established the insured's liability was never clear.

A split Eleventh Circuit panel reversed the District Court, holding that whether the insured's liability was clear was a question of fact that precluded summary judgment. The majority opinion rejected the notion that "clear liability" under *Powell* involves circumstances where "the insured's liability is 100% guaranteed" and, instead, reasoned that "clear liability" means obvious or easily discovered, seen or understood. The majority opinion found the specific facts that were known or should have been known to Kinsale regarding the insured's potential culpability, coupled with the catastrophic injuries and damages, presented a situation where a jury could reasonably find the insured's liability was clear. Accordingly, the majority concluded the record evidence was sufficient for a reasonable jury to find Kinsale acted in bad faith by failing to tender its policy sublimit before the estate filed suit. In a footnote, the Court reiterated that whether an insurer acted in bad faith is governed by the "totality of the circumstances" test, noting the *Powell* rule part of the totality of the circumstances analysis, but is not a "standalone threshold test for bad-faith liability in a no offer case."

Justice Lagoa dissented from the majority opinion on two main issues. First, the dissent suggested that interpretation of *Powell* should have been certified to the Florida Supreme Court to clarify Florida law as to when an insured's liability is clear for purposes of determining when an insurer is obligated to initiate settlement negotiations. Second, and alternatively, the dissent explaining that summary judgment for Kinsale should have been affirmed, given the "factual dispute as to the Lodge's liability before suit was filed." Because this factual dispute, the dissent reasoned the insured's liability was not clear and, therefore, Kinsale did not have an affirmative obligation under *Powell* to initiate pre-suit settlement negotiations (even under the majority's definition of "clear liability").

Kinsale has petitioned for a full Eleventh Circuit panel hearing to review the opinion, arguing the panel departed from the *Powell* framework that has guided Florida bad faith law for three decades.