

FLORIDA

SUMMARY JUDGMENT GRANTED FOR THE DEFENSE

IN FLORIDA BAD FAITH CLAIM ON NEGLIGENT SECURITY SHOOTING DEATH - FAILURE TO TENDER



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— OUR VERDICTS TELL THE STORY —

Florida Law Firm Member, Attorney Dan Santaniello, anticipates that this Summary Judgment will have a resounding effect and impact on “tender rejection” cases that are working their way through Florida Courts.

In a 10-page order, US District Judge K. Michael Moore granted summary judgment on the eve of trial in the case of Kinsale Insurance Company vs. Pride of St. Lucie Lodge 1189, Inc. (“Kinsale”).

The case arose from a fatal shooting in the parking lot of an event space in Florida. The Lodge operated a clubhouse for a fraternal organization, which hosts events on weekend nights. The Lodge’s policy of insurance had a \$50,000 sub-limit for claims arising out of assault and battery. At some point during the event, a fight broke out between 2 groups of patrons who were then ejected from the Lodge. Their fight continued in the parking lot, and a bystander was shot in the head while seated in the passenger seat of a vehicle in the Lodge’s parking lot.

Kinsale tendered its \$50K sub-limit at the time suit was filed by Plaintiff’s Firm, which was approximately nine months after Kinsale received notice of the claim. The Firm never made a policy limits demand and rejected the tender. The case, defended by a firm that is not a member of The Gavel, went to trial, and the jury returned a verdict of \$4.78 million dollars, assigning 70% fault against the Lodge. Then, Plaintiff filed a bad faith claim alleging a failure to timely tender the \$50K sub-limit.

The crux of the summary judgment argument centered directly on the application of the Powell Doctrine. (Powell vs. Prudential Property & Cas. Ins. Co., 584 So.2d 12 (Fla. Dist. Ct. App. 1991)). In Powell, the court imposed an affirmative duty upon the insurer to initiate settlement negotiations where liability is clear, and injuries so serious that a judgment in excess of the policy limits is likely. *Id.* at 14. In a case where a clearly liable insured faces massive exposure, any delay in making an offer, even where there is no assurance that the claim could be settled, could be viewed as evidence of bad faith.

Harvey vs. Geico, 259 So.3d 1 (Fla. 2018).

Florida Law Firm Member of The Gavel, Attorney Daniel Santaniello acted as an expert on behalf of Kinsale on the critical question: did Kinsale have a duty to tender on a negligent security wrongful death shooting absent a demand for policy limits? Kinsale’s counsel laid out Mr. Santaniello’s expert opinion: “Negligent security or inadequate security cases are unlike any other premises liability cases. These types of cases very rarely, if ever, are cases of clear liability. Liability becomes even more tenuous when the crime occurs between persons who know each other and have an underlying motive that culminates from heat of passion, a domestic dispute or personal hatred. Most security experts will agree these targeted crimes are not foreseeable, preventable, or ‘detractable’ because the events can escalate quickly and unpredictably, as in this case.”

Santaniello further opined: “At the time of the offer on August 18, 2016, there was no evidence or theory presented by plaintiff’s counsel despite repeated requests to provide this information. There was no evidence or theory developed by the investigator that would suggest the Lodge’s liability was clear. There was no evidence or theory suggested by the Lodge or its employees/agents/members that the shooting was foreseeable, preventable or ‘detractable...’ Liability theories changed throughout the litigation, long after Kinsale offered its limits. Prior to that time, no theory of liability whatsoever had been offered, identified or developed. This fact is indisputable... Even in a traditional inadequate or negligent security investigation involving a crime against or between unknown persons, foreseeability and duty and reasonableness of security measures is always debatable. This is the case as a matter of law because the law developed on these types of claims leaves it to the jury to determine foreseeability, reasonableness of security measures and legal causation. Indeed, the security measures in place prevented the gun used to kill Ms. Oliver from entering the premises. The gun used in this crime never left the possession or car of the shooter, who had a lawful permit to carry it.”

Santaniello's opinion further stated: "Having found nothing in the investigation to suggest the Lodge was liable for this event, the Plaintiff's counsel should not have ignored repeated attempts of Kinsale to obtain their theories of the liability or facts, or information regarding injuries and damages. These were intentional omissions... Kinsale's claim representative responded to the Law Firm within minutes of receiving the complaint on August 12, 2016, which was the first time anyone representing the plaintiff had made a claim or presented a theory of liability."

The Court granted Summary Judgment for the Defense: "As Powell imposes a duty to initiate settlement negotiations only where liability is clear, no reasonable jury could conclude that Kinsale acted in bad faith in handling the Lodge's claim. Accordingly, Kinsale is entitled to summary judgement." The decision will have a resounding effect and impact on "tender rejection" cases that are working their way through Florida Courts. Dan Santaniello regularly provides expert analysis on negligent security and bad faith opinions. For more information, contact Daniel J. Santaniello at DJS@InsuranceDefense.net.



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