

DISTRICT COURT OF APPEAL OF FLORIDA, SECOND DISTRICT

Kesler v. Progressive Select Insurance Company

Kesler v. Progressive Select Ins. Co., No. 2D2025-1038 (Fla. 2d DCA Apr. 1, 2026) · No. 2D2025-1038 ·
Decided April 1, 2026

SUMMARY

The Florida Second District Court of Appeal granted Bridgette Kesler’s petition for writ of certiorari and quashed an order compelling her former attorney, Amy Catledge, to provide additional deposition testimony in Kesler’s first-party bad faith action against Progressive Select Insurance Company. The court held that Kesler did not waive attorney-client privilege merely by filing the bad faith action and that Progressive had not established grounds to overcome the work product privilege. The court emphasized that Progressive bore the burden of proving Kesler’s alleged unwillingness to settle and had not shown the required need and undue hardship for the requested work product.

CASE DETAILS

COURT	District Court of Appeal of Florida, Second District
WRITING FOR THE COURT	Sleet; Silberman; Morris
JURISDICTION	District Court of Appeal of Florida, Second District
DECIDED	April 1, 2026
DOCKET	2D2025-1038
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Petition for Writ of Certiorari from the Circuit Court for Pasco County
STANDARD OF REVIEW	Certiorari review requires establishing (1) a departure from the essential requirements of the law (2) resulting in material injury for the remainder of the case (3) which cannot be corrected on postjudgment appeal.
PRECEDENTIAL VALUE	published
PARTIES	Bridgette Kesler v. Progressive Select Insurance Company

TOPICS

- insurance bad faith
- attorney client privilege
- work product doctrine
- evidence
- civil procedure

PRACTICE AREAS

insurance

insurance bad faith

evidence

attorney client privilege

work product doctrine

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether attorney-client privileged communications between a policyholder and her attorney are discoverable in a first-party bad faith action.
2. Whether work product materials of the insured's attorney are automatically discoverable in a first-party bad faith action.
3. Whether a policyholder waives attorney-client privilege by filing a bad faith claim.

HOLDINGS

1. Attorney-client privileged communications between a policyholder and her attorney are not discoverable in a first-party bad faith action, and the filing of a bad faith claim does not automatically waive the privilege.
2. The insured's attorney's work product is not automatically discoverable in a bad faith action; the party seeking discovery must demonstrate need and undue hardship under Fla. R. Civ. P. 1.280(c)(4).
3. Kesler did not waive her attorney-client privilege by filing a bad faith claim because the claim does not necessarily require disclosure of privileged communications with her attorney.

KEY QUOTATIONS

“Because of the uniqueness of the attorney-client privilege, . . . attorney-client privileged communications are not discoverable in a first-party [bad faith] action.” (at 10)

“[T]he focus in a bad faith case is not on the actions of the claimant but rather on those of the insurer in fulfilling its obligations to the insured.” (at 11)

“[T]here is no exception . . . that allows the discovery of attorney- client privileged communications where the requesting party has demonstrated need and undue hardship.” (at 14)

“[T]he general policy against invading the privacy of an attorney's course of preparation is so well recognized and so essential to an orderly working of our system of legal procedure that a burden rests on the one who would invade that privacy to establish adequate reasons to justify production through a subpoena or court order.” (at 15)

FACTUAL BACKGROUND

Bridgette Kesler was injured by an underinsured driver and filed a UM claim with her insurer, Progressive Select Insurance Company. After Progressive offered only \$43,000 against policy limits of \$200,000, Kesler filed a UM action and later added a bad faith count. During discovery for the bad faith action, Progressive deposed Kesler's former attorney, Amy Catledge, who invoked attorney-client and work product privileges to refuse questions about settlement negotiations and communications with Kesler. The trial court granted Progressive's motion to compel the testimony.

PROCEDURAL HISTORY

In the underlying action, Kesler filed a first-party bad faith claim against her insurer, Progressive, stemming from a dispute over an uninsured/underinsured motorist (UM) claim. During discovery, Progressive took the deposition of Kesler's former attorney, Amy Catledge, who refused to answer certain questions based on attorney-client and work product privileges. Progressive filed a motion to compel, which was granted by the trial court. Kesler sought certiorari review of that order.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

None; order quashed in part.

CASES CITED

- Avatar Prop. & Cas. Ins. v. Flores, 320 So. 3d 840 (Fla. 2d DCA 2021)
- Shindorf v. Bell, 207 So. 3d 371 (Fla. 2d DCA 2016)
- Lender Processing Servs., Inc. v. Arch Ins., 183 So. 3d 1052 (Fla. 1st DCA 2015)
- Allstate Ins. v. Langston, 655 So. 2d 91 (Fla. 1995)
- Coates v. Akerman, Senterfitt & Eidson, P.A., 940 So. 2d 504 (Fla. 2d DCA 2006)
- Genovese v. Provident Life & Accident Ins., 74 So. 3d 1064 (Fla. 2011)
- Allstate Indemnity Co. v. Ruiz, 899 So. 2d 1121 (Fla. 2005)
- Westerbeke Corp. v. Atherton, 224 So. 3d 816 (Fla. 2d DCA 2017)
- Tedrow v. Cannon, 186 So. 3d 43 (Fla. 2d DCA 2016)
- Butler v. Harter, 152 So. 3d 705 (Fla. 1st DCA 2014)
- Hickman v. Taylor, 329 U.S. 495 (1947)
- Quarles & Brady, LLP v. Birdsall, 802 So. 2d 1205 (Fla. 2d DCA 2002)
- W. Bend Mut. Ins. v. Higgins, 9 So. 3d 655 (Fla. 5th DCA 2009)
- Jenney v. Airdata Wiman, Inc., 846 So. 2d 664 (Fla. 2d DCA 2003)
- Savino v. Luciano, 92 So. 2d 817 (Fla. 1957)
- Harvey v. GEICO Gen. Ins., 259 So. 3d 1 (Fla. 2018)
- Berges v. Infinity Ins., 896 So. 2d 665 (Fla. 2004)
- Moulthrop v. GEICO Gen. Ins., 304 So. 3d 1 (Fla. 4th DCA 2020)
- Lee v. Progressive Express Ins., 909 So. 2d 475 (Fla. 4th DCA 2005)
- Akerman LLP v. Cohen, 352 So. 3d 331 (Fla. 4th DCA 2022)
- Powell v. Prudential Prop. & Cas. Ins., 584 So. 2d 12 (Fla. 3d DCA 1991)
- Pignato v. Great W. Bank, 664 So. 2d 1011 (Fla. 4th DCA 1995)
- Woodall v. Travelers Indem. Co., 699 So. 2d 1361 (Fla. 1997)

- Alliant Ins. Servs. v. Riemer Ins. Grp., 22 So. 3d 779 (Fla. 4th DCA 2009)

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