IN THE SUPREME COURT OF FLORIDA

APPEAL CASE NO.: SC24-0160

AMERICAN COASTAL INSURANCE COMPANY,

Petitioner,

vs.

PATIOS WEST ONE CONDOMINIUM ASSOCIATION, INC.,

Respondent.

3DCA Court Case No.: 3D22-1895

CORRECTED[1] BRIEF OF AMICUS CURIAE IN SUPPORT OF RESPONDENT

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STATEMENT IDENTIFYING AMICUS, ITS INTEREST IN CASE, AND SOURCE OF AUTHORITY OF AMICUS CURIAE

Effectuating the purpose of insurance and interpreting insurance contracts, laws, and regulations requires special judicial handling. United Policyholders ("UP") respectfully seeks to assist this Court in fulfilling this important role. UP is a non-profit, tax-exempt, charitable organization founded in 1991 that provides valuable information and assistance to the public concerning insurers' duties and policyholders' rights. UP monitors legal developments in the insurance marketplace and serves as a voice for policyholders in legislative and regulatory forums. UP helps preserve the integrity of the insurance system by educating consumers and advocating for fairness in policy sales and claim handling. Grants, donations and volunteers support the organization's work. UP does not accept funding from insurance companies.

UP assists individual and businesses policyholders throughout the country through three programs: Roadmap to Recovery™ (disaster recovery and claim help), Roadmap to Preparedness (disaster preparedness through insurance education), and Advocacy and Action (judicial, regulatory and legislative engagements to

uphold the reasonable expectations of insureds). UP hosts a library of informational publications and videos related to personal and commercial insurance products, coverage, and the claims process at www.uphelp.org.

UP has been serving Florida residents since 1992 when we helped promote fair claim settlements in the aftermath of Hurricane Andrew. UP's activities in the Sunshine State have included long-term disaster recovery assistance; consumer education and advocacy related to homeowners' insurance shopping, disaster preparedness and risk mitigation; and educating and assisting consumers navigating the complicated insurance claims process under wind, flood, and liability policies. State insurance regulators, academics, and journalists routinely tap UP resources and expertise on insurance issues. UP's Executive Director, Amy Bach, Esq., has served as an official consumer representative to the National Association of Insurance Commissioners since 2009. In that capacity, and in connection with UP's programs and services, Ms. Bach and other UP staff members are in regular communication with the Florida Department of Financial Services and Office of Insurance Regulation.

In furtherance of its mission, UP cautiously chooses cases and regularly appears as amicus curiae in courts nationwide to advance the policyholder's perspective on insurance cases likely to have widespread impact. Information and arguments in United Policyholders' briefs have been cited by the US Supreme Court as well as by numerous state and federal appellate courts. *See, e.g.*, *Humana, Inc. v. Forsyth,* 525 U.S. 299, 119 S.Ct. 710, 142 L.Ed.2d 753 (1999). United Policyholders has also weighed in on important insurance issues affecting homeowners and businesses in matters adjudicated before this Court, Florida appellate courts, and the United States Court of Appeals for the 11th Circuit.

UP seeks to fulfill the "classic role of amicus curiae by assisting in a case of the general public interest, supplementing the efforts of counsel, and drawing the court's attention to law that escaped consideration." *Miller-Wohl Co., Inc. v. Comm'r of Labor & Indus.*, 694 F.2d 203, 204 (9th Cir. 1982). As commentators have stressed, an amicus curiae is often in a superior position to "focus the court's attention on the broad implications of various possible rulings." R. Stern, E. Greggman & S. Shapiro, *Supreme Court Practice*, 570-71 (1986) (quoting Ennis, *Effective Amicus Briefs*, 33 Cath. U.L. Rev.

603, 608 (1984)). UP seeks to assist this Court in helping preserve policyholders' rights and more appropriately level the playing field beyond just this case.

The undersigned have authored this brief in whole. No party has contributed money to fund this brief and the undersigned have prepared this brief *pro bono*.

STATEMENT OF ISSUES

For purposes of this brief, Amicus Curiae United Policyholders will address whether Section 627.70132, Florida Statutes (2017) requires an insured to submit an estimate of damages with a notice of supplemental claim.

SUMMARY OF THE ARGUMENT

The question presented to this Court is whether Section 627.70132, Florida Statutes (2017) (the "Notice Statute") requires an insured to include a damages estimate that is above and beyond what the insurer has already paid with its notice of a supplemental claim in order to have properly submitted such a notice. The Third District came to the correct conclusion. Such a requirement is nowhere to be found in the text of the Notice Statute, which only requires the

insured to provide notice of a claim, supplemental claim, or re-opened claim that complies with the terms of the relevant policy.

ACIC complains that interpreting the Notice Statute according to its plain meaning would defeat its purpose and leave the insurer in the dark as to what is being claimed. Even if this were true, the Notice Statute's purported "purpose" cannot override the plain meaning of its provisions. Further, to the extent ACIC feels Patios West should have been required to provide more detailed information about the supplemental claim, it has only itself to blame. ACIC is the master of the policies it issues and could have easily required additional information (like that which it claims is required by the Notice Statute) to be included with a claim notice.

This conclusion is bolstered by the fact that in other statutes, the Legislature *has* required an insured to provide additional information beyond the notice required by the policy. For example, in Section 627.70152, Florida Statutes (2024), the Legislature explicitly requires an insured's notice to contain a statement of the "disputed amount" under certain circumstances. If the Legislature wanted to require similar information be provided pursuant to the Notice Statute, it would have done so expressly.

ARGUMENT

I. THE NOTICE STATUTE DOES NOT REQUIRE THE SUBMISSION OF AN ESTIMATE.

As relevant here, the Notice Statute reads as follows:

> A claim, supplemental claim, or reopened claim under an insurance policy that provides property insurance, as defined in s. 624.604, for loss or damage caused by the peril of windstorm or hurricane *is barred unless notice of the claim, supplemental claim, or reopened claim* ***was given to the insurer in accordance with the terms of the policy*** *within 3 years after the hurricane first made landfall or the windstorm caused the covered damage.*

Section 627.70132, Fla. Stat. (2017) (emphasis added).

Respondent, Patios West One Condominium Association, Inc. ("Patios West"), complied with the Notice Statute because its plain language merely requires an insurer to be given *notice* "in accordance with the terms of the policy." The plain language of the Statute must be this Court's starting point for interpreting the meaning of the Statute. *E.g.*, *Searcy, Denney, Scarola, Barnhart & Shipley, P.A. v. State*, 209 So. 3d 1181, 1189 (Fla. 2017) (quoting *Raymond James Fin. Servs., Inc. v. Phillips*, 126 So. 3d 186, 190 (Fla. 2013)); *see also* Antonin Scalia and Bryan A. Garner, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 69-77 (2012) [hereinafter "READING LAW"] ("The ordinary-meaning rule is the most fundamental semantic

rule of interpretation…[i]nterpreters should not be required to divine arcane nuances or to discover hidden meanings.") (citing James Kent, COMMENTARIES ON AM. LAW 432 (1826); and Cal. Code Civ. Proc. § 1861). When the plain language of a statute is unambiguous, as it is here, the plain language also serves as this Court's finish line. *E.g.*, *id.*; READING LAW at 69-77.

All the Notice Statute requires is "notice of [a] supplemental claim…be given to the insurer in accordance with the terms of the policy." Section 627.70132, Fla. Stat. (2017). "Notice" is defined as "notification or warning of something, esp[ecially] to allow preparations to be made…." *Notice*, NEW OXFORD AM. DICTIONARY 1200 (3d ed. 2010). The Notice Statute defines "supplemental claim" as "any additional claim for recovery from the insurer for losses from the same hurricane or windstorm which the insurer has previously adjusted pursuant to the initial claim." Section 627.70132, Fla. Stat. (2017). Thus, stated differently, the Notice Statute merely requires an insured to provide a notification or warning that the insured was seeking additional benefits for damages associated with the same storm the insurer already adjusted pursuant to the initial claim.

Petitioner, American Coastal Insurance Company ("ACIC"), argues that the Notice Statute's definition of "supplemental claim" is what requires "an estimate from [a] public adjuster, a scope of repair from [a] roofing consultant, or a proposal from a contractor." (Init. Br. at 11). While insureds can (and sometimes do) include such documents with their claim notices, nothing in the Notice Statute *required* Patios West to do so here. In essence, ACIC's argument requires this Court to adopt an interpretation of the statute that departs from the ordinary meaning of the terms utilized by the Legislature. Doing so would violate well-established Florida law. *E.g.*, *Ham v. Portfolio Recovery Assoc., LLC*, 308 So. 3d 942, 946 (Fla. 2020) ("In interpreting the statute, we follow the 'supremacy-of-text principle'—namely, the principle that '[t]he words of a governing text are of paramount concern, and what they convey, in their context, is what the text means.'") (quoting READING LAW at 56).

ACIC further argues that interpreting the Notice Statute according to its plain meaning would defeat its purpose, which, according to ACIC, is to shorten the limitations period for supplemental claims. (Init. Br. at 19-20). Even if this were true, it is a "false notion that the spirit of a statute should prevail over its

letter." READING LAW at 343 (emphasis omitted). Indeed, an interpretation of a statute according to its "spirit" or "purpose" is "a bald assertion of an unspecified and hence unbounded judicial power to ignore what the law says, leading to 'completely unforeseeable and unreasonable results.'" *Id.* (quoting Fredrick J. de Sloovere, *Textual Interpretation of Statutes*, 11 N.Y.U. L. Q. REV. 538, 542 (1934)). Unsurprisingly, this too would violate bedrock principles of Florida law. *See, e.g.*, *Armstrong v. City of Edgewater*, 157 So. 2d 422, 425 (Fla. 1963); *Moore v. State*, 388 So. 3d 22, 24 (Fla. 4th DCA 2024); *Mercury Indem. Co. of Am. v. Central Fla. Med. & Chiropractic Ctr., Inc.*, 380 So. 3d 477, 481-83 (Fla. 5th DCA 2023) [hereinafter "*Mercury*"].

Recently, another insurer, Mercury Indemnity Company of America, made arguments nearly identical to those put forth by ACIC. *See Mercury*, 380 So. 3d at 481-83. In *Mercury*, the Fifth District was tasked with interpreting section 627.736(10), Fla. Stat. ("PIP Statute"), a statute which requires PIP claimants to provide an insurer with written notice as a condition precedent to suit. *See id.* at 479-80 (quoting and citing Section 627.736(10), Fla. Stat. (2019)). Like ACIC, Mercury argued that the "purpose of the notice [required

by the PIP Statute] is not just notice of intent to sue, but also to 'notif[y] the insurer as to the exact amount for which it will be sued if the insurer does not pay the claim,'" despite a plain reading of the PIP Statute indicating otherwise. *Id.* at 481 (first alteration added; second alteration in original).

The Fifth District rejected the argument. *Id.* at 481-83. The court reasoned that **"a court must identify a statute's purpose based on the text alone, and not based on what, in its own estimation, might 'make a lot of sense.'"** *Id.* at 482 (quoting READING LAW at 39) (emphasis added). The court then explained that "[w]hen a court interprets statutory text based on what 'makes sense' to the court, rather than what the text demands, the court creates a new statute." *Id.* (citing READING LAW at 39). But courts "have no authority to write a new statute, regardless of how much sense it might make" to the judges. *Id.* (citation omitted). Indeed, "[a]ny public policy considerations raised by [a statute] are for the legislative branch, not a court." *Buechel v. Shim*, 340 So. 3d 507, 511 (Fla. 5th DCA 2021) (citing Art. II, § 3, Fla. Const.).

This Court should follow this well-worn path. As in *Mercury*, while ACIC claims that the purpose of the Notice Statute is to shorten

the limitations period, the text of the statute indicates its purpose is to provide insurers with notice that an insured intends to seek additional benefits under the policy that were not awarded when the insurer initially adjusted the claim. Since it is the text of the Notice Statute that controls this Court's interpretation of the Legislature's intent (and not ACIC's *ipse dixit*), this argument must be rejected.

At the end of the day, ACIC's argument is defeated by its own policy. Insurers are the masters and sole authors of the policies they market and sell to insureds. *Avatar Prop. & Cas. Ins. Co. v. Castillo*, 294 So. 3d 406 (Fla. 4th DCA 2020). Many policies include requirements that an insured's notice of claim contain a description of the damaged property, while others require the insured to submit a proof of loss—which calls for a monetary damages figure—shortly after submission of a claim notice. *See, e.g.*, *Edwards v. SafePoint Ins. Co.*, 318 So. 3d 13, 15 (Fla. 4th DCA 2021). Had ACIC's policy contained such requirements, they would have been incorporated into the Notice Statute. *See* Section 627.70132, Fla. Stat. (2017) (requiring notice to be given "in accordance with the terms of the policy").

Indeed, ACIC was free to include such provisions before the policy was issued. *See Avatar Prop. & Cas.*, 294 So. 3d 406 (Fla. 4th DCA 2020). However, ACIC declined to do so and this Court is "not free to rewrite an insurance policy or to add terms or meaning to it." *Royal Ins. Co. v. Latin Am. Aviation Servs., Inc.*, 210 F. 3d 1348, 1351 (11th Cir. 2000) (citing *Mansfield Indus. Coatings, Inc. v. Emps. Nat'l. Ins. Corp.*, 557 So. 2d 221 (Fla. 1st DCA 1990)). Adopting ACIC's rule would do just that. At bottom, ACIC's arguments before this Court are nothing more than an attempt at post-loss underwriting. Since the notice sent by Patios West met all of the requirements for a claim notice set forth in the policy ACIC marketed and sold to Patios West, the Notice Statute's requirements were met.

Finally, ACIC's claim that insurers will be left in the dark as to the nature and extent of supplemental claims unless insureds include such information in their notice rings hollow. Every property insurance policy provides the insurer with a plethora of tools that can be utilized to investigate and adjust claims, including, *inter alia*, the right to: i) to an examination under oath of the insured and/or agent(s) of the insured; ii) demand documents and information from the insured; and iii) access and inspect the property. In fact, insurers

have a duty to promptly and properly investigate claims. *Cingari v. First Protective Ins. Co.*, 377 So. 3d 1169, 1174 (Fla. 4th DCA 2024) (citing *Fridman v. Safeco Ins. Co. of Ill.*, 185 So. 3d 1214, 1220 (Fla. 2016)) ("[T]he duty to evaluate the claim necessarily **includes a duty to investigate the claim properly and promptly**....") (emphasis added). The Court should not shift this duty to the insured by creating requirements that are not in the Notice Statute.

II. THE LEGISLATURE COULD HAVE REQUIRED THE NOTICE OF SUPPLEMENTAL CLAIM TO INCLUDE ADDITIONAL INFORMATION BUT DECLINED TO DO SO.

If the Legislature intended to require insureds to submit detailed information regarding the supplemental claim beyond its mere existence it certainly knew how to do so. Several statutes related to insurance claims contain such requirements. This indicates that the Legislature's omission of such requirements in the Notice Statute was intentional and therefore does not speak to what must be included in such a notice beyond what is required by the policy.

The aforementioned PIP Statute is one of the insurance statutes that requires a claimant to include more detailed information in its notice. Section 627.736(10), Fla. Stat. (2019). Unlike notices sent

pursuant to the Notice Statute, a notice sent in accord with the PIP Statute must "state with specificity":

> 1. The name of the insured upon which such benefits are being sought, including a copy of the assignment giving rights to the claimant if the claimant is not the insured.
>
> 2. The claim number or policy number upon which such claim was originally submitted to the insurer.
>
> 3. To the extent applicable, the name of any medical provider who rendered to an insured the treatment, services, accommodations, or supplies that form the basis of such claim; and **an itemized statement specifying each exact amount, the date of treatment, service, or accommodation, and the type of benefit claimed to be due**....

Section 627.736(10)(b)(1)-(3), Fla. Stat. (2019) (emphasis added).

Another example is provided by Section 627.70152, Fla. Stat. (2021) (the "NOIIL Statute"). As a condition precedent to filing suit against an insurer for benefits under a property insurance policy, the claimant must provide the insurer with a written notice of intent to initiate litigation. *Id.* Such notice must state all of the following "with specificity":

> 1. That the notice is provided pursuant to [627.70152].
>
> 2. The alleged acts or omissions of the insurer giving rise to the suit, which may include a denial of coverage.

> 3. If provided by an attorney or other representative, that a copy of the notice was provided to the claimant.
>
> 4. If the notice is provided following a denial of coverage, an estimate of damages, if known.
>
> 5. If the notice is provided following acts or omissions by the insurer other than denial of coverage, both of the following:
>
> a. The presuit settlement demand, which must itemize the damages, attorneys fees, and costs.
>
> **b. The disputed amount.**

Id. (emphasis added).

The PIP Statute and NOIIL Statute explicitly require a claimant to include detailed information "stated with specificity." This is in stark contrast to the Notice Statute, which merely requires the claimant to provide notice "in accordance with the terms of the policy[.]" Section 627.70132, Fla. Stat. (2017). Thus, unlike the PIP Statute and NOIIL Statute, the Notice Statute is *silent* with respect to the *contents* of the notice. By arguing to the contrary, ACIC invites this Court to adopt an interpretation of the Notice Statute that violates not only the ordinary-meaning rule, but also the Omitted-Case Canon: "Nothing is to be added to what the text states or reasonably implies (*casus omissus pro omisso habendus est*)." READING LAW at 93 (emphasis omitted). This Court should decline.

At bottom, the Legislature is aware of its ability to require a claimant to provide an insurer with specific information regarding a claim. When it elects to do so, the Legislature explicitly lists the information required and instructs the claimant to "state [said information] with specificity" as it did in the PIP Statute and NOIIL Statute. Since claimants "should not be required to divine arcane nuances or to discover hidden meanings" this Court should affirm. READING LAW at 69 (citations omitted).

CONCLUSION

For the reasons stated herein, UP respectfully requests this Court affirm the judgment of the Third District.

Dated: January 15, 2025

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CERTIFICATE OF COMPLIANCE

This brief complies with the font requirements of Rule 9.045, Florida Rules of Appellate Procedure. It is typed in Bookman Old Style 14-point font and is comprised of proportionately spaced type. Additionally, this brief complies with Rule 9.210, Florida Rules of Appellate Procedure, as it is 3,105 words and does not exceed 20 pages.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 15, 2025, a true and correct copy of the foregoing was filed with the Clerk of Court via the Florida Courts' E-Filing Portal and served electronically on all parties to this action:

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