

IN THE SUPREME COURT OF FLORIDA

CASE NO.: SC24-0160

AMERICAN COASTAL INSURANCE
COMPANY,

Petitioner,

v.

L.T. Case No.: 3D22-1895

PATIOS WEST ONE CONDOMINIUM
ASSOCIATION, INC.,

Respondent.

APPENDIX TO PETITIONER'S BRIEF ON JURISDICTION

*On Petition for Discretionary Review
District Court of Appeal, Third District*

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INDEX TO APPENDIX

Exhibit A:

Patios W. One Condo. Ass'n v. Am. Coastal Ins. Co.,
[2024 Fla. App. LEXIS 70 \(Fla. 3d DCA Jan. 3, 2024\)](#) (p. 4-9)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 23rd day of February 2024, a true and correct copy of the foregoing document has been electronically served upon the following:

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Patios West One Condo. Ass'n v. Am. Coastal Ins. Co.

Court of Appeal of Florida, Third District

January 3, 2024, Opinion Filed

No. 3D22-1895

Reporter

2024 Fla. App. LEXIS 70 *; 49 Fla. L. Weekly D 75

Patios West One Condominium Association, Inc.,
Appellant, vs. American Coastal Insurance Company,
Appellee.

Insurance Law > Liability & Performance
Standards > Notice to Insurers > Actual Knowledge
& Notice

Notice:NOT FINAL UNTIL DISPOSITION OF TIMELY
FILED MOTION FOR REHEARING.

Insurance Law > ... > Property
Insurance > Coverage > Hurricanes & Tornadoes

Prior History:[*1]An Appeal from a non-final order
from the Circuit Court for Miami-Dade County, Peter R.
Lopez, Judge. Lower Tribunal No. 21-21244.

[HN \[↓\]](#) Notice to Insurers, Actual Knowledge &
Notice

Core Terms

supplemental, reopened, insured, notice, hurricane
estimate, damages, trial court, adjusted, windstorm,
terms of the policy, additional claim, initial claim,
documentation, losses, legal insufficiency, insurance
policy, notice of claim, landfall

The plain and unambiguous language of [§ 627.70132, Fla. Stat \(2017\)](#) does not require that an insured provide an estimate of damages in order to comply with the statutory requirement for providing an insurer with notice of a supplemental or reopened claim.

Insurance Law > Liability & Performance
Standards > Notice to Insurers > Actual Knowledge
& Notice

Case Summary

Overview

[HN \[↓\]](#) Notice to Insurers, Actual Knowledge &
Notice

HOLDINGS: [1]-The trial court erred in denying the motion to compel appraisal by its incorrect interpretation of [§ 627.70132, Fla. Stat \(2017\)](#) that appellant met its obligations under [§ 627.70132](#) to provide the insurer with notice, in the form of a letter, of its supplemental/reopened claim in accordance with the terms of its insurance policy and appellant was not required to provide an estimate of damages.

[Section 627.70132, Fla. Stat \(2017\)](#) requires that the notice of supplemental/reopened claim be made in accordance with the terms of the policy, and the statute defines a supplemental/reopened claim as an additional claim for recovery from the same, previously adjusted event.

Outcome

Reversed and remanded.

Insurance Law > Liability & Performance
Standards > Notice to Insurers > Actual Knowledge
& Notice

LexisNexis® Headnotes

Insurance Law > ... > Property
Insurance > Coverage > Hurricanes & Tornadoes

Insurance Law > ... > Property

Insurance > Obligations > Notice Requirements
Insurance Law > Claim, Contract & Practice
Issues > Policy Cancellation, Denial &
Nonrenewal > Notice Requirements

HN[↑] Upon our de novo review, we hold that the plain and unambiguous language of [section 627.70132](#) does not require that an insured provide an estimate of damages in order to comply with the statutory requirement for providing an insurer with notice of a supplemental or reopened claim. We disagree with the Fourth District's decision [Goldberg](#) to the extent it holds otherwise, and reverse the trial court's order in the instant case.

HN[↓] Notice to Insurers, Actual Knowledge & Notice

[Section 627.70132, Fla. Stat. \(2017\)](#) does not delineate what must be contained in a notice of supplemental claim. Instead, it establishes an outside time limit within which an insured must give notice to the insurer of the existence of a supplemental or reopened claim setting forth the requirements for an insured to provide notice of a claim to the insurer, nowhere does the statute require that the notice set forth those damages in excess of what the insurance company had already paid. Instead, the statute requires merely that the notice of a supplemental or reopened claim (1) be given to the insurer in accordance with the terms of the policy and (2) constitute an additional claim for recovery for damages from the same hurricane.

FACTUAL AND PROCEDURAL [*2] BACKGROUND Patios West, a condominium consisting of twenty residential buildings, sustained damage from Hurricane Irma on September 10, 2017. Soon thereafter, Patios West filed a claim with American Coastal Insurance Company (ACIC) for roof and interior damage to all twenty buildings. ACIC responded to Patios West, acknowledged coverage, but—based in part on the opinion of an engineer retained to inspect the property—ACIC determined that only three of the twenty buildings sustained a covered loss, and that the total estimate to repair the damages was less than the policy's deductible. Therefore, ACIC stated, it was making no payment to Patios West on its claim at that time.

Counsel: Alvarez, Feltman, Da Silva & Costa, P.L., and Paul B. Feltman, for appellant.

Beck Law, P.A., and Joshua S. Beck (Boca Raton), for appellee.

Judges: Before EMAS, FERNANDEZ and BOKOR, JJ.

Opinion by:EMAS

Patios West did not communicate further with ACIC on this claim until exactly three years later—September 10, 2020—the last day of the statutory, three-year deadline to file notice of a supplemental or reopened claim as provided in [section 627.70132, Florida Stat. \(2017\)](#):

Opinion

A claim, supplemental claim, or reopened claim under an insurance policy that provides property insurance, as defined in [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[*3] insurer in accordance with the terms of the policy within a years after the hurricane first made landfall or the windstorm caused the covered

EMAS, J.

INTRODUCTION

Patios West One Condominium Association, Inc. (Patios West) appeals the trial court's order denying its motion to compel appraisal. The trial court denied the motion on the ground that the notice of supplemental or reopened claim sent by Patios West to its insurer was legally insufficient under [section 627.70132, Florida Statutes](#)

(2017), because it did not include "some type of estimate" of damages. In so ruling, the trial court relied upon our sister court's decision [Goldberg v. Universal Prop. & Cas. Ins. Co., 302 So. 3d 919 \(Fla. 4th DCA 2020\)](#). We note that the Legislature subsequently amended the definitions for a "reopened claim" and a "supplemental claim" and to shorten the deadlines for filing a notice of claim. There is no dispute that the pre-2021 version of [section 627.70132](#) applies to the instant case.

[section 627.70132, Florida Statutes](#) (2017), because it did not include "some type of estimate" of damages. In so ruling, the trial court relied upon our sister court's decision [Goldberg v. Universal Prop. & Cas. Ins. Co., 302 So. 3d 919 \(Fla. 4th DCA 2020\)](#)

that "[t]he claim relates to all damages caused by the storm, regardless of what you may or may not have observed at any inspection that may have been performed or any summary you or any agent of the insured may have previously given"; requested ACIC "preserve the claim and any evidence with relation to the subject loss"; and asserted compliance with [section 627.70132](#). No damage estimate or similar documentation was attached to the letter.

Four days later, ACIC responded, asserting the claim was barred as untimely because it was received on September 10, 2020, at 3:36 p.m. and the eye of Hurricane Irma made landfall on September 10, 2017, at

9:10 a.m.—i.e., calculating the statutory, three-year deadline by the hour instead of by the day, the reopened claim was filed approximately four hours too late. ACIC advised that it would nonetheless "investigate the reason for the late notice" and requested that, to that end, should you possess any information supporting why the claim was reported late, please provide that to us immediately." (Emphasis added.)²⁰¹⁷ Doing so, ACIC "expressly reserve[d] the right to assert all policy provisions." Upon completing its investigation, ACIC denied the request to re-open the claim: "Since the request to re-open the claim was received more than three years after Hurricane Irma first made landfall, we are unable to provide coverage for the reported loss."

Patios West sued ACIC, alleging a count for breach of contract. ACIC answered and alleged numerous affirmative defenses, including that the notice of supplemental/reopened claim was untimely under [section 627.70132, Florida Statute \(2017\)](#), and that the claim was "barred" because the notice of supplemental/reopened claim failed to include "competing estimate of damages," as required by [Goldberg, 302 So. 3d at 919](#).

Thereafter, Patios West filed a motion to compel appraisal. The trial court held a hearing and determined that, as to timeliness, ACIC incorrectly interpreted the three-year deadline, and concluded that Patios West timely filed its notice of supplemental/reopened claim. The trial court did not make any further determination at that time.

Patios West later provided ACIC with a 78-page estimate of damages, and thereafter renewed its motion to compel appraisal. After conducting a hearing, the trial court denied the motion, finding that, although Patios West's September 2020 notice was timely, it was

legally insufficient under [Goldberg](#) because it did not include "some type of competing estimate" evidencing a disagreement as to the amount of damages. [Pardo v. State, 596 So. 2d 665, 666 \(Fla. 1st DCA 1992\)](#). The proper hierarchy of decisional holdings would demand that in the only case on point on a district level is [Pardo](#) from a district other than the one in which the trial court is located, the trial court be required to follow that decision") (quotation omitted). Patios West appeals the trial court's determination.

DISCUSSION AND ANALYSIS

Despite the numerous arguments raised by both sides, the fundamental question in this case is whether the trial court properly construed [section 627.70132](#) to find that the September 2020 letter was a legally insufficient notice of a supplemental/reopened claim. The answer to this question follows straightforwardly from the plain language of [section 627.70132, Florida Statutes \(2017\)](#).² The applicable version of [section 627.70132](#) asserts supplemental and reopened claims in the same manner and provides:

A claim, supplemental claim, or reopened claim under an insurance policy that provides property damage caused by the peril of windstorm or hurricane is barred unless notice of the claim,

reject Patios West's suggestion that the underlying claim was a continuation of the original claim. Patios West relies on the language from the Second District's decision in [American Coastal Ins. Co. v. Ironwood, Inc., 330 So. 3d 570 \(Fla. 2d DCA 2021\)](#) to argue that the September 2020 letter was "simply a continuation of the same [original] claim" (suggesting appraisal might be appropriate if the new claim had been part of the original roof claim). Such reliance is misplaced where ACIC's initial coverage determination noted that it considered the claim "closed." ("Please be advised, however, that the invitation to submit additional information or documentation is made without waiving or limiting your Insurer's rights, and that our Insurer considers the claim closed") (emphasis added). Compare [Heritage Prop. & Cas. Ins. Co. v. Wellington Place HOA, Inc., 373 So. 3d 1, 4 \(Fla. 4th DCA 2023\)](#) (distinguishing [Ironwood](#) where the initial claim remained open as indicated by the insurer's coverage determination letter: "Here, [], the insured's initial claim was never settled or closed after the insurer admitted coverage. . . We have generally recognized that a subsequent claim should be treated as part of the initial claim if the insurer has accepted coverage for the initial claim and the claim has not been settled") (emphasis added).

supplemental claim, or reopened claim was given ACIC previously adjusted pursuant to Patios West's the insurer in accordance with the terms of the initial claim.

policy within 3 years after the hurricane first made landfall or the windstorm caused the covered damage. For purposes of this section, the term "supplemental claim" or "reopened claim" means 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. This section does not affect any applicable limitations on civil actions provided in s. 95.11 for claims, supplemental claims, or reopened claims filed under this section.

(Emphasis added).

The terms of the insurance policy in this case track the relevant statutory language:

Changes to Duties In The Event Of Loss Or Damage include the following:

5. A claim, supplemental claim, or reopened claim for loss or damage caused by windstorm or hurricane is barred unless notice of the claim, supplemental claim, or reopened claim is given to American Coastah in accordance with the terms of the policy within 3 years after the date the hurricane first made landfall in Florida or the windstorm caused the covered damage. A supplemental claim or reopened claim means any additional claim for recovery from us for losses from the same hurricane or windstorm which we have previously adjusted pursuant to the initial claim

(Emphasis added). Neither the statute nor the policy includes any language requiring a notice of supplemental/reopened claim be accompanied by a damage estimate or the [HN1]. To the contrary, the statute requires that the notice of supplemental/reopened claim be made "in accordance with the terms of the policy," and both the statute and the policy define a supplemental/reopened claim as an "additional claim for recovery" from the same, previously adjusted event.

We hold that Patios West's September 2020 letter constituted notice of an "additional claim for recovery" from ACIC for losses from the same hurricane which

Patios West's letter asserted compliance with 627.70132 (relating to "[a] claim, supplemental claim or reopened claim") and noted that the claim relates to all damages caused by the storm, regardless of what you may or may not have observed at any inspection that may have been performed, or any summary you or any agent of the insured may have previously given. The letter was also specifically addressed to ACIC; referenced the event which resulted in the initial claim (Patios West-Irma Claim (Policy number AMC-32555-02)); requested that ACIC preserve documents related to the claim for purposes of potential litigation; and concluded by stating: "[C]onsider yourself on notice with respect to the full extent of Patios West's Hurricane Irma claim." Compare Gray v. Fla. Peninsula Ins. Co., 363 So. 3d 1216 (Fla. 6th DCA 2020) affirming trial court's finding of a legally insufficient notice of reopened/supplemental claim under 627.70132 where the only thing submitted by the insured to the insurer was "the first page (unsigned) of a letter of representation between the [insureds] and their public adjuster"). The contents of the letter, taken together, and read in light of the plain language of section 627.70132

⁴The letter reads in full:

Epic Group Public Adjusters, LLC represents Patios West One Condominium Association, Inc. (Patios West) with respect to a covered loss caused by Hurricane Irma (policy number AMC-32555-02). The claim relates to all damages caused by the storm, regardless of what you may or may not have observed at any inspection that may have been performed, or any summary you or any agent of the insured may have previously given.

Please be advised that we request that you preserve the claim and any evidence with relation to the subject loss. This includes any written materials such as witness statements, video, audio or other communications which we anticipate will be discoverable and admissible in any potential litigation. The failure to preserve this material may result in a request by the Insured's attorney for a spoliation instruction at any trial in this matter.

In an abundance of caution, this communication complies with Florida Statute Section 627.70132. Please consider yourself on notice with respect to the full extent of Patios West's Hurricane Irma claim.

³During oral argument, ACIC's attorney conceded that the statute does not include "any language with regard to an estimate."

(Emphasis added).

provided the requisite notice to ACIC of Patios West's supplemental or reopened claim pursuant to statute. Counsel for the insured eventually called Universal, inquiring as to the status of the claim. The next day, however, the insured filed a one-count complaint against Universal for breach of contract, alleging Universal refused to pay the full value of the claim, thereby materially breaching the policy. Universal answered, contending that it had accepted coverage under the policy and fully paid all covered damages under the policy. As terms of the policy." We further note that, once ACIC received the September 2020 letter, it did not request sworn proof of loss, damages estimate, or similar documentation. Instead, its written response to Patios West solicited documentation only with regard to the timing of the notice of claim, stating: "[I]n an abundance of good faith, [ACIC] is willing to investigate the reasons for the late notice," and requested Patios West provide any information "supporting why the claim was reported late" (Emphasis added). Neither the policy nor ACIC required Patios West to include an estimate or similar documentation with its notice of supplemental/reopened claim,⁵ and the September 2020 letter satisfied the statutory requirement that "notice of the . . . reopened claim was given to the insurer in accordance with the terms of the policy within 3 years."

In similar fashion, and given that the relevant language in the insurance policy mirrors the statutory language of [section 627.70132](#), we hold that Patios West's notice was made "in accordance with the terms of the policy." We further note that, once ACIC received the September 2020 letter, it did not request sworn proof of loss, damages estimate, or similar documentation. Instead, its written response to Patios West solicited documentation only with regard to the timing of the notice of claim, stating: "[I]n an abundance of good faith, [ACIC] is willing to investigate the reasons for the late notice," and requested Patios West provide any information "supporting why the claim was reported late" (Emphasis added). Neither the policy nor ACIC required Patios West to include an estimate or similar documentation with its notice of supplemental/reopened claim,⁵ and the September 2020 letter satisfied the statutory requirement that "notice of the . . . reopened claim was given to the insurer in accordance with the terms of the policy within 3 years."

Both below and on appeal, ACIC relied primarily on [Goldberg, 302 So. 3d at 916](#) to support its position that the September 2020 letter was legally insufficient to provide notice of Patios West's reopened claim. We find such reliance misplaced, because the language in [Goldberg](#) relied upon¹¹ by ACIC (and the trial court below) is dicta.

In [Goldberg](#), the insured submitted a claim to Universal for damages caused by Hurricane Irma. Universal adjusted the claim and sent payment to the insured. Three weeks later, the insured called Universal, stating "he had a proposal which was higher than" Universal's estimate. Universal requested that the insured forward the proposal, but the insured never did.

Approximately a month later (and two months after the filing of the initial claim), the insured's counsel Universal a letter of representation, requesting various categories of documents related to the claim," stating: "this office is requesting this information prior to commencing any litigation in the interest of attempting amicably resolve this matter."

⁵As noted earlier, during the pendency of the proceeding below, Patios West provided ACIC with an estimate before renewing its motion to compel appraisal.

A competing estimate by an insured's independent adjuster, or by a prospective contractor, which would fall within the definition of a "supplemental claim

Id. at 923, 924 (emphasis added).

Even if the above portion is considered to constitute part of its holding and necessary to that decision, we respectfully disagree with it and do not follow it because, as explained previously, nowhere does section 627.70132 require that an insured include a damages estimate when giving notice to insurer of the existence of a supplemental or reopened claim.

First and foremost, by focusing on the definition of "supplemental claim" Goldberg appears to overlook the fact that section 627.70132 is not a supplemental claim statute—it's a notice of supplemental claim statute. HN3 The statute does not delineate what must be contained in a notice of supplemental claim. Instead, it establishes an outside time limit (in our case, Goldberg three years) within which an insured must give notice to the insurer of the existence of a supplemental or reopened claim. In setting forth the requirements for an insured to give notice of a claim to

the insurer, nowhere does the statute require that the notice "set[] forth those damages . . . in excess of what the insurance company had already paid." Goldberg, 302 So. 3d at 923. Instead, the statute requires merely that the notice of a supplemental or reopened claim (1) be "given to the insurer in accordance with the terms of the policy" and (2) constitute an "additional claim for recovery" for losses from "the same hurricane." Id. at 923. The notice in the instant case satisfies these statutory requirements and is legally sufficient.

CONCLUSION

We hold that Patios West met its obligation under section 627.70132, Florida Statute (2017), to provide the insurer with notice of its supplemental/reopened claim in accordance with the terms of its insurance policy. If the Legislature intended the statute to require more in a notice of supplemental/reopened claim under section 627.70132 it surely could have (and presumably would have) done so. It did not. Mattino v. City of Marathon, 345 So. 3d 939, 946 (Fla. 3d DCA 2022) ("If the plain language of the statutory text does not properly reflect the legislative intent, it falls upon that body, and not this court, to amend the statute to reflect that intent." (citing Crosby v. Nat'l Foreign Trade Council, 530 U.S. 363, 390-91, 120 S. Ct. 2288, 147 L. Ed. 2d 352 (2000) (Scalia, J., concurring) ("The only reliable indication of that [legislative] intent—the only thing we know for sure can be attributed to all of them—the words of the bill that they voted to make law")). We therefore reverse the trial court's order denying the motion to compel appraisal, and remand for further proceedings not inconsistent with this opinion.

⁶While it's true that the Fourth District introduces the portion of the above quote by the prefatory "we hold, this does not preclude what follows from constituting dicta." Thourtman v. Junior, 275 So. 3d 726, 736 (Fla. 3d DCA 2019) approved 338 So. 3d 207 (Fla. 2020) (analyzing an earlier opinion of the Florida Supreme Court, and concluding that a portion of that earlier opinion—though self-described as a part of its holding—constituted dicta). If—Goldberg opinion itself states—the threshold issue was simply whether the trial court correctly determined that the insured was required, but failed, to file a supplemental claim, then the question of what must be contained in a legally sufficient supplemental claim was unnecessary to the decision and dicta, regardless of the court's characterization of it as part of the holding. Thourtman, 275 So. 3d at 733. A.M. v. State, 147 So. 3d 98, 102 (Fla. 3d DCA 2015) ("Statements not necessary to the holding constitute dicta") Puryear v. State, 810 So. 2d 901 (Fla. 2002). State v. Yule, 905 So. 2d 251, 259 n. 10 (Fla. 2d DCA 2005) holding consists of those propositions along the chosen decisional path or paths of reasoning that (1) are actually decided, (2) are based upon the facts of the case, and (3) lead to the judgment. If not a holding, a proposition stated in a case counts as dicta.") (Canady, J., specially concurring) (quoting Michael Abramowicz & Maxwell Stearns, Defining Dicta, 57 Stan. L. Rev. 953, 1065 (2005))

Reversed and remanded.

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