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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.
_______________________________/

PETITIONER'S INITIAL BRIEF ON THE MERITS

On Petition for Discretionary Review from the District Court of Appeal, Third District

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STATEMENT OF THE CASE AND FACTS

This case arises out of a property insurance claim. Petitioner American Coastal Insurance Company ("AmCoastal") seeks review based on an express and direct conflict between the decisions in *Patios West One Condo. Ass'n v. American Coastal Insurance Co.*, 388 So. 3d 893 (Fla. 3d DCA 2024) and *Goldberg v. Universal Prop. & Cas. Ins. Co.*, 302 So. 3d 919 (Fla. 4th DCA 2020). The conflict involves the requirement to submit a supplemental or reopened claim under Florida Statute § 627.70132.

The Claim

Patios West is a twenty-building condominium complex located in Miami, Florida. (R. 523, 566). In October 2017, Patios West reported a claim to its property insurer AmCoastal for "[d]amages due to hurricane Irma throughout the community." (R. 530-531). Shortly afterwards, AmCoastal received a letter from public adjuster Frank Inguanzo advising that his firm, Epic Group, represented Patios West in connection with the claim. (R. 532-536).

AmCoastal acknowledged the letter, provided a copy of the policy, and asked Mr. Inguanzo if he prepared an estimate of the damages being claimed. (R. 538). AmCoastal then coordinated an inspection of the property. (R. 539). To assist its field adjuster, AmCoastal retained a

professional engineer and a building consultant. (R. 540). Mr. Inguanzo also retained a roofing consultant of his own. (R. 540).

Over the course of two days, the adjusters, roofing consultants, and engineer inspected the exteriors, interiors, and roofs of the buildings. (R. 540-541). Afterwards, AmCoastal's engineer prepared a detailed report. (R. 564-591). The report reflected that the closest NOAA weather station to the property recorded a maximum wind gust of 72 miles per hour, which correlated to a sustained wind speed of 47 miles per hour. (R. 585). The report then outlined the engineer's evaluation of all 20 buildings and his conclusions regarding the cause of damage. (R. 586, 589). Three of the buildings, the report concluded, sustained wind damage, while the others displayed prior repairs and damage from non-wind related causes. (R. 568-584).

In addition to determining the cause of damage, the engineer outlined a scope of restoration for the wind damage, which included repairs to the roofs as well as the interiors of several units. (R. 565, 589). AmCoastal's building consultant prepared an estimate of the cost to complete those repairs. (R. 545-563). AmCoastal then sent the report and the estimate to Patios West, along with a letter explaining that three of the buildings sustained covered damage, but the cost of repair did not exceed the

policy's deductible. (R. 540-544). The letter also offered to review any additional information or documentation that may impact its coverage decision, and concluded by stating AmCoastal considered the claim "closed." (R. 544).

AmCoastal sent the letter to Patios West on May 8, 2018. (R. 593). It heard nothing further for over two years. (R. 594).

On September 10, 2020, Mr. Inguanzo sent an email to AmCoastal, stating as follows:

> Dear American Coastal Insurance Company:
>
> 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.
>
> Best Regards,

(R. 594) (emphasis in original). There were no attachments to the email, and no other documents were submitted by the public adjuster at that time. (R. 594).

AmCoastal responded four days later with a letter advising Patios West that it appeared any request to re-open the claim was untimely under Florida Statute 627.70132. (R. 595). The letter quoted the statute, which 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. 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 limitation on civil actions provided in s. 95.11 for claims, supplemental claims, or reopened claims timely filed under this section.

§627.70132, Fla. Stat.[1]

AmCoastal advised that the terms of the policy track the language of the statute and stated it would investigate the reason for the late notice since there may be circumstances that could impact its decision. (R. 595). AmCoastal also requested Patios West to provide any documentation to explain the late reporting. (R. 595).

Patios West did not provide any additional information and as a result, AmCoastal denied the claim. (R. 600-604). Six months later, Patios West sued AmCoastal. (R. 522-529).

The Litigation

In the complaint, Patios West demanded appraisal. (R. 528-529). The policy's appraisal provision states "If we and you disagree on the value of the property or the amount of loss, either may make written demand for an appraisal of the loss." (R. 947). The provision goes on to explain that each party must select a competent and impartial appraiser, and the two appraisers select an umpire. (R. 947). An agreement by any two of the three on the value of the property and amount of loss will be binding. (R. 947). Further, each party is required to pay its chosen appraiser. (R. 947).

[1] The statute has since been amended to broaden its application from windstorm and hurricane claims to claims involving any peril. As explained in AmCoastal's Jurisdictional Brief, this makes the need for resolution of the conflict even more important.

In November 2021, Patios West moved to compel appraisal. (R. 605-608). At hearing, Patios West argued its request to "reopen" the claim was timely because it was reported on the three-year anniversary of Hurricane Irma making landfall, and that appraisal is appropriate because "[t]here's a dispute as to the scope and the amount of the loss." (R. 644-645, 647-648). AmCoastal countered that the supplemental claim was not timely because there was no information or documentation to identify what additional was being claimed. (R. 653). Likewise, AmCoastal argued, appraisal was not appropriate because there was no "dispute" without some type of information about the amount being claimed. (R. 653-655).

Patios West conceded it never provided a competing estimate and asked for an additional 90 days to prepare the estimate and confirm that a dispute existed. (R. 655, 722). At the conclusion of the hearing, the trial court found the September 10, 2020 notification was timely, but asked for additional briefing on whether the notice itself was sufficient. (R. 730-732). Rather than submit the briefing, Patios West withdrew its motion. (R. 748).

On June 14, 2022, Patios West filed a notice of serving estimate of damages. (R. 759-838). Attached to the notice was an estimate dated May 27, 2022, outlining a number of repairs to the various buildings at the

property. (R. 762-837). At the same time, Patios West filed a renewed motion to compel appraisal. (R. 752-758).

The trial court held another hearing and began by reiterating its request for case law on whether the notice was sufficient. (R. 841-843). Patios West presented testimony from AmCoastal's corporate representative and the public adjuster Mr. Inguanzo. (R. 844). AmCoastal testified that, prior to May 27, 2022, there was never any information provided by Patios West concerning what additional recovery was being claimed beyond the damages identified in AmCoastal's initial determination. (R. 873). The public adjuster confirmed the May 27, 2022 estimate was the first written documentation provided to AmCoastal refuting the amount of damages; but, he claimed, he made a verbal statement to the engineers while inspecting the property about the scope and amount of damages. (R. 877, 884).

AmCoastal argued the September 10, 2020 notice was insufficient to satisfy the statute's requirements for presenting a supplemental claim or the policy's requirements for invoking appraisal. (R. 888-890). Patios West countered that "We don't feel that we fall into the reopen or supplemental claim scenario because it was basically adjusted and we're just unhappy." (R. 891).

The trial court denied the motion, reasoning that *Goldberg* and other cases require a disagreement based on "some type" of competing estimate, contractor's statement, or demand letter to inform the amount of additional benefits claimed. (R. 893).

The Appeal

The parties' briefs addressed the requirements of Florida Statute 627.70132, including each party's position on the impact of *Goldberg*. (R. 27-30, 493-500, 511-514). Patios West argued it was not required to provide an estimate "to re-open the claim" under the statute or the policy. (R. 27-30). In doing so, it drew a distinction between a "supplemental claim" and a "re-opened" claim. (R. 28). AmCoastal argued that "at a minimum, Patios West should have known what additional damages it was seeking" and that waiting until "the absolute last day" to send a letter does not extend the time indefinitely to determine whether additional damages exist. (R. 512).

The Third District found Patios West's notice satisfied the statutory requirements and was legally sufficient. (R. 1032). It explained 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.'" (R. 1032).

The court initially attempted to distinguish *Goldberg* by finding the only issue decided in that case was whether an insured was required to submit a supplemental claim before filing suit. (R. 1030). However, the court went on to cite two passages from *Goldberg:*

> [W]e hold that Goldberg was required to file a supplemental claim *setting forth those damages* he sought in excess of what the insurance company had already paid.
>
> * * *
>
> A *competing estimate* by an insured's independent adjuster, or by a prospective contractor, which is submitted to the insurer *would fall within this definition of a "supplemental claim."*

(R. 1030-1031).

The court "respectfully disagree[d] with" these portions of the opinion reasoning that the statute does not require an insured to include an estimate of damages when giving notice of a supplemental claim, or to set forth those damages in excess of what the insurance company had already paid. (R. 1031-1032).

AmCoastal sought review based on the conflict between the Third District's decision and the Fourth District's decision in *Goldberg*. This Court accepted jurisdiction.

SUMMARY OF THE ARGUMENT

The statute defines a supplemental claim as any ***additional claim for recovery*** from the same hurricane for which the insurer previously adjusted an initial claim. The plain meaning of the emphasized phrase is a request for something beyond what the insurer originally adjusted.

This is the meaning applied in *Goldberg* and it is consistent with Florida courts' repeated characterization of a supplemental claim as a request for damages in excess of what the insurer has already paid. The common theme in cases addressing this concept is that an insured requested something specific from the insurer in addition to what had previously been claimed.

Patios West made no such request. Its September 10, 2020 email did not request additional recovery at all. The decision below reached the opposite conclusion by relying on the email's asserted compliance with the statute. But simply asserting compliance does not make it so. Indeed, the assertion is immediately followed by a sentence directing AmCoastal to consider itself on notice of the full extent of the claim. Because the email did not identify anything new, AmCoastal can only be "on notice" of that which it already knew – i.e. the initial claim.

Moreover, the Third District's interpretation ignores the statute's distinction between an initial claim and a supplemental claim in that it would allow any correspondence that references a loss to trigger notice of some yet-to-be-defined claim. As shown by Patios West, the details of which may not be provided for years to come.

The only thing Patios West needed to do to seek additional recovery was to make a simple request. It could have come in the form of an estimate from the public adjuster, a scope of repair from the roofing consultant, or a proposal from a contractor. Even a letter outlining what additional damage should be considered would suffice. Any of these documents could easily have been obtained in the three years after Hurricane Irma struck the property before the statutory deadline. Patios West chose not to obtain any of this. Instead, it waited until the absolute last day, provided a vague email referencing the claim, and hoped to make additional recovery once all of the associated costs could be shifted through litigation. This does not satisfy the plain language of the statute or its intent.

ARGUMENT

ISSUE

WHETHER AN INSURED MUST PROVIDE SOME INDICATION OF WHAT IS IN DISPUTE IN ORDER TO MEET THE STATUTORY REQUIREMENT TO SUBMIT AN ADDITIONAL CLAIM FOR RECOVERY FROM THE SAME HURRICANE THAT THE INSURER PREVIOUSLY ADJUSTED.

"The plain meaning of the statute is always the starting point in statutory interpretation." *Alachua County v. Watson*, 333 So. 3d 162, 169 (Fla. 2022) (internal quotations and citation omitted). The provision at issue defines "supplemental claim" or "reopened 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." (emphasis added). The plain meaning of the emphasized phrase is a request for something beyond what the insurer originally adjusted.

This is the meaning applied by the Fourth District in *Goldberg v. Universal Property & Casualty Ins. Co.*, 302 So. 3d 919 (Fla. 4th DCA 2020). The court noted that the policy, by incorporating the statute's definition of "supplemental claim," required the insured to notify the insurer that he claimed further damages from Hurricane Irma. *Id.* at 923. The court recognized the definition encompasses ***any*** additional claim for recovery,

and to meet the requirement, the insured must set forth the damages being sought in excess of what the insurance company has already paid. *Id.* at 923. Although the court's decision did not require an estimate, it recognized that a competing estimate from an adjuster or a prospective contractor would fall within the definition of a supplemental claim. *Id.* at 924.

The Second District applied the same definition in a similar manner. In *American Coastal Ins. Co. v. Ironwood, Inc.*, 330 So. 3d 570 (Fla. 2d DCA 2021), the court found an insured's claim for damage to its windows and doors was an "additional claim for recovery for losses from the same hurricane" when the insurer had previously adjusted the insured's claim for damage to its roofs. *Id.* at 573. Likewise, in *Lemon v. People's Trust Ins. Co.*, 344 So. 3d 56 (Fla. 5th DCA 2022), the Fifth District addressed policy language that mirrored the statute, describing further damage as a supplemental claim. *Id.* at 58 ("Approximately a month after cashing the check, the Lemons discovered more moisture damage in their home's ceilings, garage, and home office and advised PTI, through a public adjuster, of their supplemental claim").

These decisions are consistent with Florida courts' repeated characterization of a "supplemental claim" as a request for damages in

excess of what the insurer has already paid. *See Allstate Ins. Co. v. Suarez*, 833 So. 2d 762, 763 (Fla. 2002) (insured "filed a supplemental claim and disputed the adequacy of the amount of the initial payment"); *State Farm Fla. Ins. Co. v. Cardelles*, 159 So. 3d 239, 240 (Fla. 3d DCA 2015) ("Plaintiffs hired another public adjuster … who submitted a supplemental claim for the Plaintiffs … demanding that the Plaintiffs' claim be reopened and requesting an additional $127,000 in damages"); *Citizens Prop. Ins. Corp. v. Mango Hill #6 Condo. Ass'n, Inc.*, 117 So. 3d 1226, 1227 (Fla. 3d DCA 2013) ("Mango Hill presented a supplemental claim in the sum of $846,049.46 through a public adjuster"); *State Farm Florida Ins. Co. v. Fernandez*, 211 So. 3d 1094 (Fla. 3d DCA 2017) (involving supplemental claim where "the insureds' public adjuster sent State Farm a demand for appraisal on their behalf, claiming that Hurricane Wilma caused $142,733.81 in damages"); *Redlhammer v. ASI Preferred Ins. Corp.*, 337 So. 3d 421, 422 (Fla. 3d DCA 2021) ("Redlhammer later submitted a supplemental claim to ASI, seeking an additional payment for additional repair costs associated with fixing the home's broken main drain line, an item that had not been addressed and adjusted previously by ASI"); *United Prop. & Cas. Ins. Co. v. Concepcion*, 83 So. 3d 908, 909 (Fla. 3d DCA 2012) ("In March 2009, a public adjuster inspected Concepcion's property

and filed a supplemental claim with United for $122,769.40."); *Edwards v. SafePoint Ins. Co.*, 318 So. 3d 13, 16 (Fla. 4th DCA 2021) ("On March 15, 2017, the public adjuster sent SafePoint a supplemental request for payment, seeking an additional $12,061.10").

The common theme in all of these cases is that an insured requested something specific from the insurer in addition to what had previously been claimed. Patios West made no such request. To the contrary, it argued that no notice was required at all because the claim "was basically adjusted and we're just unhappy." (R. 891). The flaw in this logic is that it does not explain why Patios West was unhappy or what AmCoastal can do to fix it. Was the payment not timely? Was the amount paid insufficient? Or was there something additional that AmCoastal did not consider during its original investigation?

The actual language of the September 10, 2020 email does not shed any light on the issue. Again, the email reads as follows:

> 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.

The email does not request additional recovery from AmCoastal. It does not identify any damage allegedly overlooked by AmCoastal, or suggest the claim was underpaid, or identify damage that was not previously reported. Indeed, the only request made is that AmCoastal preserve evidence for litigation.

To find otherwise, the Third District relied on the fact that the email asserted compliance with the statute. But simply asserting compliance does not make it so, especially in this case where the statute applies to claims, supplemental claims, and reopened claims. A generic statement of compliance could be intended to apply to any of these. Here, the assertion of compliance is immediately followed by a sentence directing AmCoastal to consider itself on notice of "the full extent of Patios West's Hurricane

Irma claim." Because the email does not identify anything "new," AmCoastal can only be "on notice" of that which it already knew – i.e. the initial claim.

The Third District also relied on the excerpt 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." Again, this is not an additional claim for recovery – at least not without more. There is nothing stating that some aspect of damage was overlooked or some additional payment is due. It is much more akin to the first page of a letter of representation between an insured and public adjuster, which is not sufficient to constitute a supplemental or reopened claim. *Gray v. Fla. Peninsula Ins. Co.*, 363 So. 3d 1216 (Fla. 6th DCA 2023).

Even taking the two statements together, it is difficult to see how an insurer could be considered on notice of an ***additional*** claim for recovery. At a minimum, notice of a supplemental claim should contain a request for something more – more money, another inspection, or a review of previously unaddressed damage. This tracks the plain language of the statute, is consistent with the Fourth District's interpretation, and follows

how courts have repeatedly defined supplemental claims under existing law. See *Goldberg*, *Ironwood, Lemon*, *Suarez*, *Cardelles*, *Mango Hill #6*, *Fernandez*, *Redlhammer*, *Concepcion*, and *Edwards, supra*.

It is also consistent with other principles of Florida law. See *Certain Underwriters at Lloyd's v. Lago Grande 5-D Condo. Ass'n, Inc.*, 337 So. 3d 1277, 1281 (Fla. 3d DCA 2022) (collecting cases and explaining a disagreement over the amount of loss is necessary to trigger appraisal of an insurance claim and no such disagreement existed when insured filed suit "without ever providing its own estimate of loss, expressing disagreement with the Insurer's determinations, or demanding additional payment"); *National Fire Ins. v. Bartolazo*, 27 F. 3d 518, 519 and n. 1 (11th Cir. 1994) (applying Florida law and holding letter to doctor advising of representation of patient "in her claim for medical malpractice and other relief against you" and requesting medical records was not a "demand for money or services" and therefore did not constitute a "claim").

By contrast, the Third District's interpretation is inconsistent with the statute and Florida law. The court's decision would allow any correspondence directed to an insurer that references a claim to act as a "placeholder" for some yet-to-be-identified claim. Essentially, this treats a "supplemental claim" or "reopened claim" the same as an initial claim, in

that merely referencing the loss in a letter to an insurer is sufficient notice to allow the claim to be fully investigated later.

However, the statute distinguishes initial claims from supplemental and reopened claims. It defines the latter as an "additional claim for recovery" for losses from the same hurricane which the insurer previously adjusted pursuant to the initial claim. The distinction is important. It signifies that initial claims are different from supplemental or reopened claims. See *Watson*, 333 So. 3d at 169-170 (ascertaining plain meaning of statute requires courts to look at particular statutory language as well as the language and design of the statute as a whole).

Practically, allowing a notice of supplemental or reopened claim to act as a placeholder would undermine the entire purpose of the statute. In those situations, a last-minute notification could open the door to a claim that may not be made for years to come. This is not hyperbole. It happened in the case at bar. Patios West did not even prepare an estimate of its own until May 27, 2022 – nearly five years after Hurricane Irma made landfall – and only after prompting by the trial court.

This was not an oversight. Patios West explained it did not prepare an estimate sooner because doing so would be too onerous. (R. 121-125). According to Patios West, it did not want to incur the cost of preparing an

estimate until there was the potential to recover those costs. (R. 124). Under this logic an insured would never have to disclose the amount sought in addition to what the insurer paid until after suit is filed, when the cost of identifying any additional amount owed could possibly be recovered as a litigation cost. Again, the position is contrary to Florida law. In fact, the law requires public adjusters, like the one retained by Patios West at the outset, to prepare estimates for their clients. See §626.854(12), Fla. Stat. (2016) ("Each public adjuster shall provide to the claimant or insured a written estimate of the loss to assist in the submission of a proof of loss or any other claim for payment of insurance proceeds").

A result finding Patios West's claim untimely is not unfair or unjust. To the contrary, the only thing Patios West needed to do to seek additional recovery was to make a simple request. This could have come in the form of a statutorily-required estimate prepared by its public adjuster; or a scope of repair prepared by the roofing consultant that inspected the property on its behalf; or a proposal from a contractor hired to perform repairs. Even a letter outlining what additional damage should be considered would suffice. Any of these documents could easily have been obtained in the three years after Hurricane Irma struck the property before the statutory deadline. However, Patios West chose not to obtain any of this. Instead, it waited

until the absolute last day, provided a vague email referencing the claim, and hoped to make additional recovery once all of the associated costs could be shifted through litigation. This does not satisfy the plain language of the statute or its intent.

CONCLUSION

For the reasons outlined above, AmCoastal respectfully requests the Court to hold a "supplemental claim" or "reopened claim" under Florida Statute 627.70132 requires an insured to identify some specific items or amount being claimed, beyond what was previously paid by the insurer, reverse the decision of the Third District, and find Patios West's notice was insufficient.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 24th day of October 2024, a true and correct copy of the foregoing document has been electronically served upon the following:

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Brief complies with the requirements of Florida Rule of Appellate Procedure 9.210(a)(2) and is submitted in Arial 14-point font and the word count is 4,364.

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