

IN THE SUPREME COURT OF FLORIDA

CASE NO.: SC24-0160
L.T. Case No.: 3D22-1895

AMERICAN COASTAL INSURANCE COMPANY,

Petitioner,

v.

PATIOS WEST ONE CONDOMINIUM ASSOCIATION, INC.,

Respondent.

RESPONDENT'S ANSWER BRIEF ON JURISDICTION

ON PETITION FOR DISCRETIONARY REVIEW
DISRICT COURT OF APPEAL, THIRD DISTRICT

Date: March 25, 2024.

PAUL B. FELTMAN, ESQ.
ALVAREZ, FELTMAN, DA SILVA
& COSTA, P.L.
2525 S.W. 27th Avenue, Suite 200
Miami, FL 33133
Telephone: 786.409.6000
Facsimile: 786.362.5175
E: PFeltman@AFDC.Legal
E: AArbide@AFDC.Legal
Attorneys for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIESii

STATEMENT OF THE CASE AND THE FACTS.....1

Introduction.....1

The *Patios West* Decision.....1

ARGUMENT.....5

I. THERE IS NO DIRECT AND EXPRESS CONFLICT BETWEEN
PATIOS WEST AND *GOLDBERG*.....5

II. CONCLUSION7

TABLE OF AUTHORITIES

Cases

Goldberg v. Universal Property & Cas. Inc. Co., 302 So. 3d 919 (Fla. 4th DCA 2020).....Passim

Gray v. Fla. Peninsula Ins. Co., 363 So. 3d 1216 (Fla. 6th DCA 2023).....7

Patios West One Condominium Assoc., Inc. v. American Coastal Ins. Co., No. 3D22-1895, 2024 WL 24782 (Fla. 3d DCA Jan. 3, 2024).....Passim

Florida Statutes

§ 627.70132 (2017).....Passim

Florida Constitution

Art. V, § 3(b)(3), Fla. Const.....1

Florida Rules of Appellate Procedure

Fla. R. App. P. 9.210(a)(2).....8

STATEMENT OF THE CASE AND FACTS

Introduction

Patios West One Condominium Assoc., Inc. v. American Coastal Ins. Co., No. 3D22-1895, 2024 WL 24782 (Fla. 3d DCA Jan. 3, 2024) and *Goldberg v. Universal Property & Cas. Inc. Co.*, 302 So. 3d 919 (Fla. 4th DCA 2020), are not in express and direct conflict. The Third District explained in detail why it found there was no conflict based on American Coastal's reliance on dicta in *Goldberg*. Therefore, this Court should refuse to accept jurisdiction. Further, even if there is a direct and express conflict, the exercise of jurisdiction is not mandatory. See Art. V, § 3(b)(3), Fla. Const. *Id.* (The Court “[m]ay review any decision of a district court of appeal...that expressly and directly conflicts with a decision of another district court of appeal...”.) *Id.*

The *Patios West* Decision

Patios West sustained damage as a result of Hurricane Irma on September 10, 2017. *Patios West*, 2024 WL 24782 *1. The claim was reported to American Coastal, which acknowledged the claim, retained an engineer, which concluded only 6 of 20 buildings on the property sustained a covered loss. *Id.* Because American Coastal

estimated the total damages as below deductible it made no payment.

Id. On September 10, 2020, Patios West gave notice of a claim for additional recovery pursuant to its policy which tracks the language of § 627.70132, Fla. Stat. The statute provides:

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.

Patios West, 2024 WL 24782 *3 (emphasis in the opinion). The policy’s language states:

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 Coastal *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.

Id. at *3 (emphasis in the opinion). Neither the statute nor the policy includes any language requiring a notice of supplemental/reopened claim be accompanied by a damage estimate or the equivalent. *Id.*

Patios West's September 10, 2020, letter for "additional claim for recovery" was set forth in part in the opinion as follows:

Patios West's letter asserted compliance with section 627.70132, (relating to "[a] claim, supplemental claim or reopened claim") and noted 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.*" 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."

Id. Four days later, American Coastal responded and asserted that the claim was barred as untimely because it was received on September 10, 2020 at 1:36 p.m. and the eye of the hurricane made landfall at 9:10 a.m. – calculating the statutory, three-year deadline

by the hour instead of by the day; thus allegedly making the claim four hours late. *Id.* at *2. American Coastal only sought to “investigate the reason for the late notice” and requested that: “[t]o that end, should you possess any information supporting why the claim was reported late, please provide that to us immediately.” *Id.* American Coastal did not request a sworn proof of loss, damage estimate, or similar documentation. *Id.* at *4. It only solicited documentation on why the claim was reported late. *Id.*

Patios West filed suit and subsequently moved to compel appraisal. *Id.* at *2. The trial court held a hearing and determined that as to timeliness, American Coastal incorrectly interpreted the three-year deadline and concluded that Patios West timely filed its notice of supplemental/reopened claim. *Id.* No further determinations were made at that time. *Id.* The trial court held another hearing and determined that the notice was legally insufficient relying on *Goldberg v. Universal Property & Cas. Inc. Co.*, 302 So. 3d 919 (Fla. 4th DCA 2020).

The Third District reversed finding that the trial court relied on dicta in *Goldberg*. The Fourth District characterized the “threshold issue” before it as whether [the insured] was required to submit a

supplemental claim before filing suit for additional payment. *Patios West*, 2024 WL 24782 *5. The Fourth District found that the answer was “yes” but the insured in *Goldberg* failed to file a supplemental claim. *Id.* Under *Goldberg* an estimate would fall within the definition of a supplemental claim. *Id.* In *Patios West* the Third District properly found that neither the statute nor the policy required an estimate be provided with notice of the supplemental claim, that an estimate was but one way to make a supplemental claim, and that the letter provided to American Coastal was sufficient to put it on notice of a supplemental claim. *Id.*

ARGUMENT

I. THERE IS NO DIRECT AND EXPRESS CONFLICT BETWEEN PATIOS WEST AND GOLDBERG

As the Third District correctly pointed out, the language relied upon by American Coastal is misplaced, because the language in *Goldberg* relied upon by American Coastal and the trial court is dicta. *Patios West*, 2024 WL 24782 *4. The Third District correctly found that the threshold issue in *Goldberg* was whether the insured was required to file a supplemental claim at all.

Thus, the issue squarely decided by the Fourth District (i.e., the threshold issue) was whether the insured was

required to file a supplemental claim at all. Having answered that question “yes”—and having determined that the insured was required, but failed, to file a supplemental claim (thus affirming the trial court’s entry of final judgment in favor of Universal)—there was no need to decide the ancillary question of what would have constituted a legally sufficient notice of supplemental claim under the statute.

Id. at *5 (emphasis in the original). As to the ancillary question, the Fourth District found that a competing estimate by an insured’s independent adjuster, or by a prospective contractor would fall within the definition of a supplemental claim. *Goldberg*, 302 So. 3d at 923, 924 (“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.’*”) (emphasis in the opinion). Thus, an estimate is one way to make a supplemental claim. However, the Third District correctly found that a competing estimate was not the only way in which an insured may make a supplemental claim. Thus, there is no conflict between the decisions of the Third and Fourth Districts.

In this matter, the Third District correctly found that under the facts of this case, Patio West’s September 2020 letter was legally sufficient to constitute a supplemental claim pursuant to §

627.70132 (2017). *Patios West*, 2024 WL 24782 *4 (“The contents of the letter, taken together, and read in light of the plain language of section 627.7012, provide the requisite notice to ACIC of Patios West’s supplemental or reopened claim pursuant to the statute.”). The Third District compared and contrasted the letter in this matter with the one provided in *Gray v. Fla. Peninsula Ins. Co.*, 363 So. 3d 1216 (Fla. 6th DCA 2023), affirming the trial court’s finding of a legally insufficient notice of reopened/supplemental claim under section 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”). *Patios West*, 2024 WL 24782 at *3. Therefore, the letter in that matter simply did not provide sufficient notice under the facts of that case.

II. CONCLUSION

There is no direct and express conflict between *Patios West* and *Goldberg* and the Court should decline to accept jurisdiction. Even if there is a direct and express conflict, it is still within this Court’s discretion to decline to exercise jurisdiction.

Respectfully submitted,
By: /s/ Paul B. Feltman

PAUL B. FELTMAN, ESQ.
Fla. Bar No.: 992046
**ALVAREZ, FELTMAN,
DA SILVA & COSTA, PL.**
Counsel for Respondent
2525 S.W. 27th Avenue
Suite 200
Miami, FL 33133
E-mail: pfeltman@afdc.legal
E-mail: aarbide@afdc.legal
T: 786-409-6000
F: 786-362-5175

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed on March 25, 2024, via the Florida Courts E-Filing Portal and sent via e-mailed to:

TRAUB LIEBERMAN STRAUS & SHREWSBERRY, LLP

Scot E. Samis, Esq.
C. Ryan Jones, Esq.
55 First Street South
St. Petersburg, FL 33701
ssamis@tlsslaw.com
ServiceJJones@traublieberman.com
sschneider@tlsslaw.com
Counsel for Petitioner

By: /s/ Paul B. Feltman
PAUL B. FELTMAN, ESQ.

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 Bookman old Style 14-Point font, and that the
number of words in this brief total 1,546.