

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 BRIEF ON JURISDICTION

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

C. Ryan Jones
Fla. Bar No. 0029043
Scot E. Samis
Fla. Bar No. 0651753
Traub Lieberman Straus
& Shrewsberry LLP
55 First Street South
St. Petersburg, FL 33701
(727) 898-8100 telephone
(727) 895-4838 facsimile
E-Mail Designations:
ssamis@tlsslaw.com
ServiceRJones@traublieberman.com
sschneider@tlsslaw.com

TABLE OF CONTENTS

	Page(s)
Table of Citations to Authority	iii
Statement of the Issue	iv
Statement of the Case and Facts	1
Argument	7
Issue	7
<p>WHETHER THE DISTRICT COURT'S OPINION IN <i>PATIOS W. ONE CONDO. ASS'N V. AM. COASTAL INS. CO.</i>, 2024 FLA. APP. LEXIS 70 (FLA. 3D DCA JAN. 3, 2024) CONFLICTS WITH DECISIONS OF OTHER DISTRICT COURTS ON THE REQUIREMENT TO SUBMIT A SUPPLEMENTAL INSURANCE CLAIM UNDER FLORIDA STATUTE 627.70132.</p>	
Conclusion	13
Certificate of Service	14
Certificate of Compliance	15

TABLE OF CITATIONS

Cases:	Page(s)
<i>Goldberg v. Universal Prop. & Cas. Ins. Co.</i> , 302 So. 3d 919 (Fla. 4th DCA 2020)	<i>passim</i>
<i>Gray v. Florida Peninsula Ins. Co.</i> , 363 So. 3d 1216 (Fla. 6th DCA 2023)	12
<i>Patios W. One Condo. Ass'n v. Am. Coastal Ins. Co.</i> , 2024 Fla. App. LEXIS 70 (Fla. 3d DCA Jan. 3, 2024)	<i>passim</i>
 Statutes	
Florida Statute § 627.70132	<i>passim</i>

STATEMENT OF THE ISSUE

The issue is whether the District Court's opinion in [*Patios W. One Condo. Ass'n*, 2024 Fla. App. LEXIS 70 \(Fla. 3d DCA Jan. 3, 2024\)](#), conflicts with decisions of other District Courts on the requirement to submit a supplemental insurance claim under [Florida Statute § 627.70132](#).

In the event the Court grants review, American Coastal intends to raise the issue of the proper requirements to submit a supplemental insurance claim under the statute.

STATEMENT OF THE CASE AND FACTS

This request for review arises out of a property insurance claim. In [*Patios W. One Condo. Ass'n*, 2024 Fla. App. LEXIS 70, at *13](#), the Third District “respectfully disagreed with” and did not follow the Fourth District’s decision in [*Goldberg v. Universal Prop. & Cas. Ins. Co.*, 302 So. 3d 919 \(Fla. 4th DCA 2020\)](#). As explained below, the two decisions expressly and directly conflict on what is required to submit a supplemental or reopened claim under [Florida Statute § 627.70132](#).

The *Patios West* Decision

Patios West is a twenty-building condominium that sustained damage from Hurricane Irma on September 10, 2017. [*Patios W.*, 2024 Fla. App. LEXIS 70, at *2](#). Shortly afterwards, it reported a claim to American Coastal. [*Id.*](#) American Coastal acknowledged the claim, retained an engineer to inspect the property, and concluded that only three of the twenty buildings sustained a covered loss. [*Id.*](#) American Coastal estimated the cost to repair the covered damage at an amount less than the policy’s deductible. [*Id.*](#)

After being advised of these conclusions, Patios West did not communicate further with American Coastal until September 10, 2020, which was the last day to provide notice of a claim, supplemental claim, or

re-opened claim under [Florida Statute § 627.70132](#). *Id.* The “fundamental question” addressed by the Third District was whether the trial court properly construed the statute to find Patio West’s September 2020 letter was legally insufficient notice of a supplemental or reopened claim. [Id. at *5](#).

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.

[Id. at **5-6](#) (emphasis in opinion).

The September 2020 letter read 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.

[Id. at n. 4](#) (emphasis in opinion). The letter did not attach a damage estimate or any similar documentation. [Id. at *3.](#)

The trial court, relying on *Goldberg*, concluded the notice was insufficient because it did not include “some type of estimate” of damages. [Id. at *1.](#)

The Goldberg Decision

When Goldberg’s condo unit was damaged by Hurricane Irma, he reported a claim to his insurer, Universal. [Goldberg, 302 So. 3d at 920-921.](#) Universal inspected the property, prepared an estimate of the covered damage, and issued payment. [Id.](#)

About three weeks later, “Goldberg called Universal and ‘advised that he had a proposal which was higher than’ Universal’s estimate.” [Id. at 921-922](#). Universal asked Goldberg to forward the estimate, but he never did. [Id. at 922](#). Later, Goldberg’s counsel sent a letter of representation, which also requested various documents “prior to commencing any litigation in the interest of attempting to amicably resolve the matter.” [Id.](#)

The claim did not resolve and Goldberg sued Universal. After discovery, Universal argued it was entitled to summary judgment because Goldberg did not submit an estimate or a supplemental claim prior to filing suit. [Id.](#) The trial court granted the motion.

On appeal, the Fourth District described the “threshold issue” as “whether Goldberg was required to submit a supplemental claim before filing suit for additional payment for the loss to the dwelling.” [Id. at 923](#).

The court answered affirmatively:

Based on the policy language drawn from a Florida statute, we 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.

[Id.](#)

The court reasoned a request for additional payment would fall within “an additional claim for recovery” and as a result “Goldberg was required to

notify Universal that he claimed further damages from Hurricane Irma.” [*Id.*](#)

It added:

... to the extent Goldberg sought additional payment for his losses from the same hurricane after the adjustment of his initial claim, the policy required him to submit a “supplemental claim,” which is an “additional claim for recovery.” 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.”

[*Id.* at 924.](#)

The court affirmed the summary judgment, in part, because Goldberg did not comply with the requirement that he submit a supplemental claim prior to filing suit. [*Id.* at 920.](#)

The Disagreement

Patios West specifically addressed two excerpts 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.”*

[*Patios W.*, 2024 Fla. App. Lexis 70 at *13](#) (alteration and emphasis provided in *Patios West*).

The court “respectfully disagree[d] with” these portions of the opinion and did “not follow” the *Goldberg* decision. [*Id.*](#) The court reasoned 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. [*Id at *14.*](#)

As a result, the court found Patios West’s September 10, 2020 letter constituted notice of an “additional claim for recovery” and met the requirements of the statute. [*Id. at **7-9.*](#) This petition followed.

ARGUMENT

Issue

WHETHER THE DISTRICT COURT'S OPINION IN *PATIOS W. ONE CONDO. ASS'N V. AM. COASTAL INS. CO.*, 2024 FLA. APP. LEXIS 70 (FLA. 3D DCA JAN. 3, 2024) CONFLICTS WITH DECISIONS OF OTHER DISTRICT COURTS ON THE REQUIREMENT TO SUBMIT A SUPPLEMENTAL INSURANCE CLAIM UNDER FLORIDA STATUTE § 627.70132.

I. The Holdings

American Coastal acknowledges the Third District characterized the Fourth District's language in *Goldberg* as "dicta." However, even if that is the case, it does not reconcile the two decisions.

In *Goldberg*, the court affirmed in part and reversed in part a summary judgment, explaining "[s]ummary judgment was proper as to the coverage on the dwelling, because Goldberg did not comply with the policy requirement that he submit a supplemental claim prior to filing suit." [*Goldberg*, 302 So. 3d at 920](#). To make this ruling, the court necessarily decided two issues: (i) that Goldberg is required to submit a supplemental claim before filing suit (what it called the "threshold issue"); and (ii) that Goldberg did not do so.

The latter conclusion means Goldberg's telephone call stating he had a higher proposal than Universal's estimate, and his counsel's letter of

representation were not sufficient to provide notice of a “supplemental claim” as defined by statute. The Third District reached the opposite conclusion regarding the letter of representation sent on behalf of Patios West. The only conclusion that can be drawn is *Patios West* imposed a different requirement to submit a supplemental claim than *Goldberg*.

II. The Conflict

The conclusions in *Patios West* and *Goldberg* cannot be reconciled. The closest thing to a supplemental or reopened claim in either case was Goldberg’s call to Universal advising he had a proposal that was higher than Universal’s estimate. However, the Fourth District did not consider this an “additional claim for recovery.”

The court’s conclusion makes sense when the only fact provided is that a “higher” proposal exists. The proposal could have exceeded Universal’s estimate for any number of reasons: it may have included an upgrade in the materials used, or repairs to other portions of the home that were not part of the covered loss, or additional remodeling. Any of these scenarios would explain a higher cost, but would not obligate the insurer to issue further payment, and would not constitute an additional claim for recovery for losses from the same hurricane.

Universal also received a letter of representation from Goldberg’s counsel. The letter included a request for various documents and announced an attempt to amicably resolve the matter before commencing litigation. But the letter “did not provide Universal with a supplemental claim or a damage estimate.” [Id. at 922.](#)

The letter of representation sent in *Patios West* is no different. The first of the three paragraphs in the letter read:

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.

[Patios W., 2024 Fla. App. Lexis 70 at n. 4](#) (emphasis in opinion).

Like the letter in *Goldberg*, this paragraph merely advised American Coastal the insured was represented. The language italicized by the court only defines the scope of the claim – all damages caused by the storm. It does not indicate American Coastal overlooked any damage, that its estimate was incorrect, or that additional damage should be considered.

In the same way Universal cannot glean an “additional claim for recovery” from a higher proposal, American Coastal cannot glean an

additional claim for recovery from a letter representing an insured for all storm damage “regardless of what you may or may not have observed at any inspection that may have been performed.”

The second paragraph of Patios West’s letter does not distinguish the cases. Again, it states:

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.

[Patios W., 2024 Fla. App. Lexis 70 at n. 4.](#)

There is no meaningful distinction between the request to preserve claim-related materials and the statement in Goldberg’s letter requesting similar information in an attempt to reach an amicable resolution prior to litigation. Both statements, at most, could be considered notice of a potential lawsuit. Neither one identified additional damage, indicated the insurer’s estimate was too low, or made an “additional claim for recovery.”

The final paragraph of the letter does not resolve the conflict either. It states:

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.

[Patios W., 2024 Fla. App. Lexis 70 at n. 4](#) (emphasis in opinion).

The generic allegation of compliance is too vague to provide notice of a supplemental claim. The statute applies to claims, supplemental claims, and reopened claims, so a generic statement of compliance could apply to any of these. Indeed, on appeal, Patios West took the position the claim at issue “was a continuation of the original claim.” [Patios W., 2024 Fla. App. Lexis 70 at n. 2](#). If Patios West contends its letter relates to the original claim, then how could American Coastal be charged with recognizing it as notice of a supplemental claim?

The next sentence in the paragraph only furthers the point. It instructs American Coastal to consider itself on notice of the “full extent of Patios West’s Hurricane Irma claim.” This suggests American Coastal either (i) was already on notice of the full extent of the claim; or (ii) is now, after some additional information contained within the letter, aware of the full extent of the claim. Patios West’s position regarding the original claim suggests the former was its intent, but in either case, the letter is not clear about what “additional claim for recovery” is supposedly being made.

It is difficult to see how such a letter puts an insurer on notice of a claim for additional recovery. Nevertheless, the Third District accepted the

letter as sufficient. Under this approach, it seems any indication of representation is sufficient to notify an insurer of a “supplemental claim.” The Fourth District, however, requires something more, such as setting forth the damages in excess of what the insurer already paid, an express statement claiming further damage, or a competing estimate. The Fourth District’s approach seems consistent with that of the Sixth District. See [Gray v. Florida Peninsula Ins. Co., 363 So. 3d 1216 \(Fla. 6th DCA 2023\)](#) (unsigned letter of representation submitted on September 10, 2020 was insufficient to constitute a notice of claim).

This Court should accept jurisdiction to resolve the conflict over what is needed to submit a supplemental claim. Clarification will aid insureds and insurers, as well as practitioners and courts throughout Florida in applying the statute to all pending and future windstorm claims.

III. The Amendments

The amendments to [Florida Statute § 627.70132](#) do not render the conflict moot. The most recent amendment still imposes a reporting deadline, with the added complication of distinguishing between “reopened” and “supplemental” claims, and setting a different time limitation for each. In fact, the amendment expanded the statute’s reach from windstorm and hurricane claims to “any peril,” which makes a resolution of this conflict

even more important.

CONCLUSION

This Court should accept jurisdiction to resolve the express and direct conflict between *Patios West* and the decisions of the other district courts of appeal, on the requirement to submit a supplemental claim under [Florida Statute § 627.70132](#).

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:

Joshua S. Beck, Esq.
Beck Law, P.A.
901 Clint Moore Road, Suite C
Boca Raton, FL 33487
beck@becklawpa.com
pleadings@becklawpa.com

Paul B. Feltman, Esq.
Alvarez, Feltman, Da Silva & Costa
2525 S.W. 27th Avenue, Suite 200
Miami, FL 33133
pfeltman@afdc.legal
aarbride@afdc.legal

/s/ C. Ryan Jones
C. Ryan Jones
Fla. Bar No. 0029043
Scot E. Samis
Fla. Bar No. 0651753
Traub Lieberman Straus
& Shrewsberry, LLP
55 First Street South
St. Petersburg, FL 33701
(727) 898-8100 – Telephone
(727) 895-4838 – Facsimile
Attorneys for Appellee
For service of court documents:
ssamis@tlsslaw.com
ServiceRJones@traublieberman.com
sschneider@tlsslaw.com

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 2,489.

/s/ C. Ryan Jones _____

C. Ryan Jones

Fla. Bar No. 0029043