Filing # 215038944 E-Filed 01/21/2025 05:26:27 PM

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 REPLY BRIEF ON THE MERITS

_____

On Petition for Discretionary Review from the 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		iv
Argument		1
Issue		1
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		
I.	Defining a "Supplemental Claim"	1
II.	Applying Goldberg	5
	A. The decision	6
	B. The facts at issue	7
	C. The Conflict	8
III.	Evaluating the Parties' Arguments	9
	A. AmCoastal's Position	9
	B. Patios West's Position	12
	C. United Policyholders' Position	16
Conclusion		16
Certificate of Service		18

TABLE OF CONTENTS

	Page(s)
Certificate of Compliance	19

TABLE OF CITATIONS

Cases **Page(s)**

Allstate Ins. Co. v. Suarez,
833 So. 2d 762 (Fla. 2002) 11

American Coastal Ins. Co. v. Ironwood, Inc.,
330 So. 3d 570 (Fla. 2d DCA 2021) 10

Bennett v. St. Vincent's Med. Ctr., Inc.,
71 So. 3d 828 (Fla. 2011) 4

Ceballo v. Citizens Property Insurance Corp.,
967 So. 2d 811 (Fla. 2007) 2

Citizens Prop. Ins. Corp. v. Mango Hill #6 Condo. Ass'n, Inc.,
117 So. 3d 1226 (Fla. 3d DCA 2013) 11

Crosby v. Nat'l Foreign Trade Council,
530 U.S. 363 (2000) 4

Edwards v. SafePoint Ins. Co.,
318 So. 3d 13 (Fla. 4th DCA 2021) 12

Fayad v. Clarendon Nat'l Ins. Co.,
899 So. 2d 1082 (Fla. 2005) 5

Fla. Birth–Related Neuro. Injury Comp. Ass'n v. Dep't of Admin. Hearings,
29 So. 3d 992 (Fla. 2010) 4

Goldberg v. Universal Prop. & Cas. Ins. Co.
302 So. 3d 919 (Fla. 4th DCA 2020) 6,7-8

Ham v. Portfolio Recovery Associates, LLC,
308 So. 3d 942 (Fla. 2020) 1

Heart of Adoptions, Inc. v. J.A.,
963 So. 2d 189 (Fla. 2007) 4

Cases **Page(s)**

Hill v. State Farm Fla. Ins. Co.,
35 So. 3d 956 (Fla. 2d DCA 2010) 15

Holly v. Auld,
450 So. 2d 217 (Fla. 1984) 5

Knowles v. Beverly Enters.-Fla., Inc.,
898 So. 2d 1 (Fla. 2004) 4

Lemon v. People's Trust Ins. Co.,
344 So. 3d 56 (Fla. 5th DCA 2022) 10

Mattino v. City of Marathon,
345 So. 3d 939 (Fla. 3d DCA 2022) 4

McLaughlin v. State,
721 So. 2d 1170 (Fla. 1998) 5

Patios West One Condo Ass'n v. Am. Coastal Ins. Co.,
388 So. 3d 893 (Fla. 3d DCA 2024) 4,5

Raymond James Fin. Servs., Inc. v. Phillips,
126 So. 3d 186 (Fla. 2013) 4

Redlhammer v. ASI Preferred Ins. Corp.,
337 So. 3d 421 (Fla. 3d DCA 2021) 11

State v. Crose,
378 So. 3d 1217 (Fla. 2d DCA 2024) 1-2

State v. Gabriel,
28 314 So. 3d 1243 (Fla. 2021) 4

State Farm Fla. Ins. Co. v. Cardelles,
159 So. 3d 239 (Fla. 3d DCA 2015) 11

State Farm Fla. Ins. Co. v. Fernandez,
211 So. 3d 1094 (Fla. 3d DCA 2017) 11

Cases **Page(s)**

State Farm Mut. Auto. Ins. Co. v. Pridgen,
498 So. 2d 1245 (Fla. 1986) 5

Taurus Holdings, Inc. v. U.S. Fid. & Guar. Co.,
913 So. 2d 528 (Fla. 2005) 5

United Prop. & Cas. Ins. Co. v. Concepcion,
83 So. 3d 908 (Fla. 3d DCA 2012) 11

U.S. Fire Ins. Co. v. J.S.U.B., Inc.,
979 So. 2d 871 (Fla. 2007) 5

Rules

Florida Statute § 627.70132 3,16

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

Patios West's argument misses the central issue in dispute. Despite AmCoastal acknowledging that an estimate is not required to constitute a supplemental claim, Patios West makes this the focus of its brief. The actual issue before the Court is whether an insured must provide ***some indication*** of what is in dispute in order to provide notice of a "supplemental claim." An affirmative answer is required by the plain language of the statute, principles of statutory interpretation, and existing case law.

I. Defining a "Supplemental Claim"

AmCoastal acknowledges the interpretation principles outlined in the cases cited by Patios West. However, in recent years this Court outlined a more succinct paradigm for interpreting a statute, the "supremacy-of-text principle," where the words of the statute are of paramount concern, and what they convey, in context, is what they mean. *Ham v. Portfolio Recovery Associates, LLC*, 308 So. 3d 942, 946 (Fla. 2020); see also *State*

v. Crose, 378 So. 3d 1217 (Fla. 2d DCA 2024) (collecting cases and describing evolution of statutory interpretation principles).

Both the statute and the policy define "supplemental claim" as "any additional claim for recovery" from the same loss as the initial claim. Doing so distinguishes a "supplemental" claim from the "initial" claim by requiring something "additional."

Dictionaries define "additional" to mean "more than is usual or expected: added"[1] and "more than what already exists."[2] This Court gave the term the same meaning when construing the coverage available under a property insurance policy. *Ceballo v. Citizens Property Insurance Corp.*, 967 So. 2d 811, 813-814 (Fla. 2007) (explaining that "Typically, supplemental or additional coverage … is the addition to an insurance policy of a different type of loss beyond the primary risk already covered and for which the policy was designed. Logically, before an insured can add additional coverage to a policy, that policy must contain some base, standard, or initial coverage that may be augmented by additional coverage.").

---

[1] https://www.merriam-webster.com/dictionary/additional (last visited January 12, 2025).

[2] https://dictionary.cambridge.org/dictionary/essential-british-english/additional?q=Additional (last visited January 12, 2025).

The plain meaning of a supplemental claim, therefore, is a request for something more than what the insurer already adjusted in the initial claim. This exposes the fatal flaw in Patios West's argument. There is nothing in the September 10, 2020 email that asks for something more from AmCoastal:

> 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.

There was no request for further payment. There was no request to re-inspect the damage. And there was no suggestion that anything was

overlooked. Without seeking ***something*** more, it is impossible to consider the email an "additional claim for recovery."

Patios West attempts to shift the focus from this shortcoming by arguing that the statute does not require an insured to submit an estimate to provide notice of a supplemental claim. While this is true, it does not cure the deficiencies in the notification. Indeed, AmCoastal does not contend that an estimate is required, only that the notice contain a request for something more than was already adjusted in the initial claim.

Such a reading complies with the interpretation principles necessitating that language be given its plain and obvious meaning, without ignoring words or limiting meaning. See *Raymond James Fin. Servs., Inc. v. Phillips*, 126 So. 3d 186, 190 (Fla. 2013) (quoting *Heart of Adoptions, Inc. v. J.A.*, 963 So. 2d 189, 198 (Fla. 2007)); *Bennett v. St. Vincent's Med. Ctr., Inc.*, 71 So. 3d 828, 837-38 (Fla. 2011) (quoting *Fla. Birth–Related Neuro. Injury Comp. Ass'n v. Dep't of Admin. Hearings*, 29 So. 3d 992, 997 (Fla. 2010)); *State v. Gabriel*, 28 314 So. 3d 1243, 1248 (Fla. 2021) (quoting *Knowles v. Beverly Enters.-Fla., Inc.*, 898 So. 2d 1, 7 (Fla. 2004)); *Patios West*, 388 So. 3d at 901 (citing *Mattino v. City of Marathon*, 345 So. 3d 939, 946 (Fla. 3d DCA 2022) (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)); *McLaughlin v. State*, 721 So. 2d 1170, 1172 (Fla. 1998); *Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984); *U.S. Fire Ins. Co. v. J.S.U.B., Inc.*, 979 So. 2d 871, 877 (Fla. 2007); *Taurus Holdings, Inc. v. U.S. Fid. & Guar. Co.*, 913 So. 2d 528, 532 (Fla. 2005); *State Farm Mut. Auto. Ins. Co. v. Pridgen*, 498 So. 2d 1245, 1248 (Fla. 1986)); *Fayad v. Clarendon Nat'l Ins. Co.*, 899 So. 2d 1082, 1086 (Fla. 2005).

The Third District's characterization of the statute as a "notice of supplemental claim statute" rather than a "supplemental claim statute" does not change the analysis or the outcome. *Patios West One Condo. Ass'n v. Am. Coastal Ins. Co*, 388 So. 3d 893 at 899 (Fla. 2024). As the court correctly recognized, the statute requires that the "notice" must "constitute an 'additional claim for recovery' for loss from 'the same hurricane.'" *Id*. at 901. As explained above, this means the email must have contained a request for something more, which it did not do.

II. Applying Goldberg

Golberg involved the same issue as the present case. It was correctly decided, is indistinguishable on the issue presented, and provides appropriate basis for conflict jurisdiction.

A. The decision

Patios West begins this section with the same flawed premise as the prior section. It argues *Goldberg* was wrongly decided because the case held an insured must include a damage estimate when giving notice of a supplemental claim. *Goldberg* did no such thing.

After deciding that Goldberg was required to submit a supplemental claim based on the language of the policy (which mirrored the statute), the court held that Goldberg did not make the necessary submission. It did not hold that an estimate was required to submit a supplemental claim. It merely recognized that a competing estimate from the insured's independent adjuster or a prospective contractor would fall within the definition of a "supplemental claim." *Goldberg v. Universal Prop. & Cas. Ins. Co.*, 302 So. 3d 919, 924 (Fla. 4th DCA 2020).

Thus, contrary to Patios West's assertion, this Court does not need to conclude that an estimate must be submitted with a supplemental claim to find *Goldberg* was correctly decided. See Answer Brief p. 38. Rather, *Goldberg* – like AmCoastal – concludes that an insured must submit a request for something more from the insurer.

The operative language from *Goldberg* is consistent with the plain meaning of the phrase an "additional claim for recovery." The court held

"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*. at 923. Setting forth "damages" does not necessarily require an estimate. It could also mean a request for an additional amount of money, or a request to inspect an area of damage not previously covered, or a request for any other benefit believed to be owed under the policy. In short, ***something*** beyond what the insurer had previously paid. This interpretation does not rewrite the policy or the statute. It gives effect to the plain meaning of the existing language.

B. The facts at issue

Patios West contends *Goldberg* is distinguishable because Goldberg's insurer asked him to provide an estimate and the "failure to comply by the insured … was a violation of the conditions of the policy." Answer Brief p. 44. Patios West then argues that AmCoastal did not request an estimate or a proof of loss and therefore did not trigger the duty to comply with the conditions of the policy.

This analysis breaks down because *Goldberg* was not decided based on the insured's failure to submit an estimate upon request. Rather, the Fourth District made clear that the policy obligation at issue was the insured's duty to submit a supplemental claim: "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." *Goldberg*, 302 So. 3d at 923. The court also made clear that its decision was based on Goldberg's failure to comply with this obligation. *Id*. at 920 (holding summary judgment was appropriate "because Golberg did not comply with the policy requirement that he submit a supplemental claim").

This confirms the dispositive issue in the case at bar is the same as in *Goldberg*. Both insurance policies required the insured to submit supplemental claims, and both insurers asserted this obligation was not met. Anything requested by AmCoastal (or Goldberg's insurer) after the purported supplemental claim was reported has no bearing on whether the notice constituted a "supplemental claim" as defined by the statute and policy.

C. The Conflict

In this section, Patios West attempts to re-argue whether the Court has jurisdiction – an issue that was already decided. To do so, Patios West focuses solely on what the *Goldberg* decision characterized as the "threshold issue": whether the insured was required to submit a supplemental claim. After answering the question in the affirmative, the

court went on to hold that Goldberg did not submit a supplemental claim. This confirms that *Goldberg* necessarily determined the insured's notification did not constitute an additional claim for damage.

The notice given by Golberg is indistinguishable from the notice given by Patios West. AmCoastal outlined the similarities in detail on pages 8-12 of its jurisdictional brief and therefore will not repeat the arguments here.

By determining Patios West's notification constituted an additional claim for damage, the Third District created an express and direct conflict with *Goldberg* making this Court's jurisdiction proper.

III. Evaluating the Parties' Arguments

A. AmCoastal's Position

Patios West claims AmCoastal fails to address the fact that the statute is a "notice statute not a supplemental claim statute." Answer Brief p. 47. This is simply incorrect. Regardless of how the statute is characterized, its meaning is clear from the plain language: a "supplemental claim … for loss or damage caused by the peril of windstorm or hurricane is barred unless notice of the … supplemental claim … was given to the insurer in accordance with the terms of the policy within 3 years after the hurricane first made landfall."

Even limiting the focus to notification, it is necessary to consider what an insurer must be given notification of – an ***additional*** claim for recovery. This is where Patios West's analysis breaks down. The September 10, 2020 email does not request anything "additional."

An estimate is not the only way to make an additional claim for recovery. Two of the cases cited in the Initial Brief demonstrate this point. In *American Coastal Ins. Co. v. Ironwood, Inc.*, 330 So. 3d 570, 571 (Fla. 2d DCA 2021), the insured notified the insurer of "damage to doors and windows caused by the same hurricane." In *Lemon v. People's Trust Ins. Co.*, 344 So. 3d 56, 58 (Fla. 5th DCA 2022), the insureds advised their insurer that they "discovered more moisture damage in their home's ceilings, garage, and home office." The windows and doors, as well as the moisture damage to specific rooms in the house were something beyond what was adjusted in the original claim and therefore constitute an additional claim for recovery.

Patios West attempts to distinguish these cases by focusing on what happened ***after*** the supplemental claims were made. But this misses the point. In each case, the insurer investigated the supplemental claim after receiving notice of an additional claim for recovery. It is the additional claim for recovery that triggers the insurer's obligation to adjust the claim.

Nothing more was requested by Patios West and that is why AmCoastal did not request any further information regarding what is being claimed.

The other cases cited in the Initial Brief – while not interpreting the statute at issue – provide many examples of how an insured can request more from an insurer:

- disputing the adequacy of the initial payment (*Allstate Ins. Co. v. Suarez*, 833 So. 2d 762, 763 (Fla. 2002));
- demanding a claim be reopened and requesting an additional $127,000 in damages (*State Farm Fla. Ins. Co. v. Cardelles*, 159 So. 3d 239, 240 (Fla. 3d DCA 2015));
- presenting a specific monetary demand through a public adjuster (*Citizens Prop. Ins. Corp. v. Mango Hill #6 Condo. Ass'n, Inc.*, 117 So. 3d 1226, 1227 (Fla. 3d DCA 2013) and *United Prop. & Cas. Ins. Co. v. Concepcion*, 83 So. 3d 908, 909 (Fla. 3d DCA 2012));
- providing a public adjuster's estimate that exceeds the insurer's estimate and demanding appraisal to resolve the dispute (*State Farm Florida Ins. Co. v. Fernandez*, 211 So. 3d 1094, 1094 (Fla. 3d DCA 2017));

- seeking payment for repair costs for an item that had not been addressed and adjusted previously (*Redlhammer v. ASI Preferred Ins. Corp.*, 337 So. 3d 421, 422 (Fla. 3d DCA 2021)); and
- requesting a specific monetary payment and providing a public adjuster's estimate and repair invoice (*Edwards v. SafePoint Ins. Co.*, 318 So. 3d 13, 16 (Fla. 4th DCA 2021)).

The September 10, 2025 email did none of these things. At most, it provided notification that the public adjuster represented Patios West. The only thing Patios West needed to do was request additional recovery. This is not a stretch in statutory interpretation. It gives effect to the plain, obvious, and common sense meaning of every word in the statute.

B. Patios West's Position

Patios West's argument ignores the plain language of the statute and does not make sense practically. Patios West claims AmCoastal mischaracterized its position by citing to an alternative position rather than the primary position. Regardless of which position it considers appropriate, Patios West clearly asserted it has no obligation to provide an estimate, a proof of loss, or any other indication of what additional recovery it sought to obtain from AmCoastal.

This is contrary to the plain language of the statute, which requires notice of an additional claim for recovery. As explained above, a request for "additional" recovery ***can*** come in the form of an estimate. It can also come in the form of a request for more money, a request to inspect property not previously considered, a request to reimburse additional repair expenses, a request for additional payment for an item already adjusted, or any request for something more. None of this was done.

Accepting Patios West's position amounts to holding an "additional claim for recovery" can be accomplished by sending a letter that (i) advises the insurer that the insured is represented, (ii) requests all materials be preserved for litigation, and (iii) unilaterally claims compliance with a statute. While this might suffice to constitute an initial claim, it does not identify anything additional being requested, which is necessary to recognize the distinction between an initial claim and a supplemental claim. As the statute makes clear, a "supplemental claim" is "any additional claim for recovery … for losses from the same hurricane … which the insurer has previously adjusted pursuant to the initial claim." The key component missing from Patios West's e-mail is what additional is being claimed.

The following exchange between the trial court and Patios West's counsel illustrates the practical distinction between an initial claim and a supplemental claim:

> THE COURT: But when you requested to reopen the case, I mean, appraisals, there has to be a dispute.
>
> MR. LARA: There is a dispute. By putting them on notice of a reopened claim, we are telling them, "We are not happy with the initial adjustment of the claim," which is this claim is under deductible.
>
> THE COURT: But you've got to give them something. What if your estimate was $600,000?
>
> MR. LARA: If it was $600,000, Your Honor, we wouldn't have put them on notice.
>
> THE COURT: I know, but I'm just saying, what if. They don't know that there's a dispute until you give them a number.
>
> MR. LARA: Okay.
>
> THE COURT: How are they supposed to adjust something or determine to go to appraisal on what?

(R. 125). Although this exchange took place in the context of appraisal, the same holds true in the context of needing to know what "additional" is being claimed.

Insurance companies cannot read minds, nor can they determine from a letter of representation why an insured may be dissatisfied or what

can be done to remedy the situation. This is why the statute requires some indication of what additional is desired from the insurer.

Such a requirement is also consistent with the common-sense principle that if an insured wants something more from an insurer, the insured needs to ask. As Judge Altenbernd recognized nearly fifteen years ago: "Adjusting and settling property claims under insurance policies is never an easy process. It requires a level of good faith and cooperation from all parties." *Hill v. State Farm Fla. Ins. Co.*, 35 So. 3d 956, 960 (Fla. 2d DCA 2010).

Patios West most certainly could have told AmCoastal what additional it was seeking. Its public adjuster, as an insurance professional, could point out any potential error in AmCoastal's coverage determination. Likewise, since the public adjuster is statutorily required to provide an estimate, he could easily have identified any omissions from AmCoastal's estimate. Further, the roofing consultant retained by the public adjuster could have pointed out any concerns with the scope of AmCoastal's repair estimate. Any of these would amount to an additional claim for recovery.

Instead, Patios West waited over two years until the last possible day. The delay was not caused by difficulty in finding the individuals qualified to determine what needed to be done. Those individuals were already

retained and had even inspected the loss with AmCoastal. Nor is there anything in the record to suggest the delay was caused by an inability to locate a contractor to make repairs. Indeed, there is no indication of any repairs being made at all. The only potential explanation in the record is that Patios West did not want to incur the cost of identifying what additional they believed was owed until the costs could be passed on to AmCoastal. (R. 121-125).

Allowing such a result undermines the spirit and intent of the statute, principles of statutory construction, and the general requirement of good faith and fair dealing among both parties to an insurance claim.

C. United Policyholders' Position

The arguments in United Policyholders' amicus brief are nearly identical to those in Patios West's Answer Brief. Since the arguments are duplicative, no further comment is needed.

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 21st day of January 2025, 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 3,304.

/s/C. Ryan Jones
C. Ryan Jones
Fla. Bar No. 0029043