

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 PETITION FOR DISCRETIONARY REVIEW
DISRICT COURT OF APPEAL, THIRD DISTRICT

Date: December 20, 2024.

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STATEMENT OF THE CASE AND FACTS

The Loss

Patios West One Condominium Association, Inc. (“Patios West”) was insured by American Coastal Insurance Company (“American Coastal”) with a policy number AMC-32555-02 (the “Policy”). R-40.¹ Patios West is located at 11003 N.W. 7th Street, Miami Florida 33172 (the “Property”). *Id.* The Property consists of 20 residential buildings. *Id.* On September 10, 2017, the Property sustained a covered loss as a result of wind damage and/or a covered peril causing openings in the roofs or walls and rain entering through the openings (the “Loss”). *Id.*

The Statute and Policy

The version of § 627.70132, Fla. Stat. in effect at the time reads:

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

¹ “R” refers to the Record on Appeal followed by the page number.

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.

The Policy's Duties In The Event Of Loss Or Damage follows the language of the statute. It reads:

3.e. 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.

R-385. Therefore, the statute and the Policy by their plain meaning simply require notice and nothing more.

The other relevant provision in the Policy reads as follows:

3. Duties In The Event Of Loss Or Damage

In case of loss to covered property, we have no duty to provide coverage under this Policy if the failure to comply with the following duties is prejudicial to us. Those duties must be performed either by you, an insured seeking coverage, or a representative of either.

- a. You must see that the following are done in the event of loss or damage to Covered Property.

...

(8) Send us a signed, sworn proof of loss containing the information we request to investigate the claim.

You must do this within 60 days after our request. We will supply you with the necessary forms.

(9) Cooperate with us in the investigation or settlement of the claim.

R-384. American Coastal never requested a sworn proof of loss or estimate, or provided the “necessary forms” when it first adjusted the claim, or when it received notice of the supplemental claim.²

Initial Claim

The claim was reported on October 9, 2017, and was acknowledged the same day by two letters from American Coastal’s third-party administrator CJW Associates (“CJW”) who assigned Derrick Poole as its account manager. R-47-48. On October 26, 2017, Patios West retained Epic Group to act as its adjuster, which

² American Coastal was also obligated pursuant to § 627.70131(2), Fla. Stat. to provide the necessary claim forms, like a sworn proof of loss, to Patios West. It reads:

(2) Such acknowledgment must be responsive to the communication. **If the communication constitutes a notification of a claim**, unless the acknowledgment reasonably advises the claimant that the claim appears not to be covered by the insurer, **the acknowledgment must provide necessary claim forms, and instructions, including an appropriate telephone number.**

provided its letter of representation on November 14, 2017. R-49. The parties agreed to an inspection of the Property over two days, March 8-9, 2018. R-54. Mr. Frank Inguanzo of Epic Group represented Patios West during the parties' inspection of the Property. Mr. Inguanzo has 48 years of experience in adjusting residential and commercial claims on behalf of insurers and insureds. R-336. He made the initial report of the claim and spoke to American Coastal's representatives during the first few months of the claim for all 20 buildings for both roof and interior damages. R-337. Along with Mr. Inguanzo, Patios West retained Mr. Tom Perrine, a roofing consultant with 20-25 years of roofing experience, to assist with the inspection. R-338.

On May 7, 2018, American Coastal issued its coverage determination in a below deductible partial denial letter. R-55. American Coastal admitted that there was coverage. However, of the 20 buildings claimed as part of the Loss, American Coastal acknowledged coverage for only 3. *Id.* The coverage determination letter stated:

The overall conclusions were that wind related damage occurred to the roof coverings of buildings, 3, 12, and 13 and that the majority of the remaining roofs are in need of

maintenance. It was determined that cuts, holes, alligating, blistering and laps not sealed were the result of improper installation, lack of maintenance and improper repairs. Wrinkles and creasing of rolled roofing is determined to be a result of manufacturer and installation defects.

R-55. In other words, American Coastal arbitrarily partially covered the Loss and partially denied the remainder of the Loss. The letter refers to an exclusion in the Policy that includes, among other things, wear and tear and deterioration, general mechanical breakdown or latent defect, and/or faulty, inadequate or defective maintenance of the roofing system. R-56-57. The Policy carried a 5% deductible for hurricane damages, which was below the \$14,281.01 that American Coastal claimed were the total of Patios West's damages.

Notice of Supplemental Claim

On September 10, 2020, Epic Group sent an email notifying American Coastal it was making a supplemental claim and referenced its compliance with the version of § 627.70132, Fla. Stat. (2017) in effect at the time. R-60.

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 discovered 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.

R-60. (emphasis in the original).

On September 14, 2020, Defendant's Claim Administrator, Sedgwick Delegated Authority ("Sedgwick") wrote two letters. One to Epic Group, and the other to Patios West. R-61 and 66, respectively. Sedgwick claimed that the notice of the supplemental claim was barred pursuant to § 627.70132, Fla. Stat. as untimely. R-61. It alleged that the notice was received at 1:36 p.m. on September 10, 2020, and according to the National Weather Service "the eye made landfall in Cudjoe Key at 9:10 a.m. making any claims submitted after 9:09 a.m. EST barred per the above referenced statute."

Sedgwick stated that in “good faith” it would investigate the reason the notice was allegedly late. R-61. The only information requested was why the claim was reported late based on it being made after 9:09 a.m. No Sworn Proof of Loss or estimate was requested. No other post-loss compliance was requested. The letter reads in relevant part:

American Coastal’s notice to re-open of this claim was received on September 10, 2020 at 1:36 p.m.. Thus, it appears that this claim is barred by the limitations period contained in Florida Statute Section 627.70132. According to the National Weather Service, “[t]he eye made landfall in Cudjoe Key at 9:10 am. Therefore, any claims submitted after 9:09 am EST are barred per the above referenced statute. Please see the below link to the National Weather Service’s Report on Hurricane Irma for reference.

...

However, in an abundance of good faith, American Coastal is willing to investigate the reason for the late notice, as there may be circumstances that impact this decision. To that end, should you possess any information supporting why the claim was reported late, please provide that to us immediately. Please note, our investigation into the late notice of this claim does not waive any defenses American Coastal has or may have in the future.

R-61. The letter also refers to the language in the Policy and sets forth § 627.70132. Fla. Stat. in whole. R-62.

On March 3, 2021, American Coastal responded to Patios West’s supplemental claim and denied same. R-66. It denied the

supplemental claim alleging notice was late because the hurricane made landfall on Cudjoe Key on September 10, 2017 at 9:10 a.m. and the notice was given on September 10, 2020 at 1:36 p.m. *Id.* That time difference was the sole basis for denying the claim as late. American Coastal made no investigation of the supplemental claim and did not ask for a Sworn Proof of Loss, estimate, or any other post-loss compliance with its right and duty under the Policy. The letter reads in pertinent part:

We have completed our review of your Hurricane Irma claim that was reported on October 9, 2017. An inspection was completed and on May 7, 2018 a Below Deductible with Partial Denial letter was issued. A request to re-open the claim was received on September 10, 2020 at 1:36 pm. According to the National Weather Service, [t]he eye made landfall in Cudjoe Key at 9:10 am. 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. Please refer to Florida Statute 627.70132 and the applicable policy language.

R-67. The letter then sets forth the statute and Policy language verbatim. *Id.*

Lawsuit

On September 9, 2021, Patios West filed a two count Complaint for declaratory relief and breach of contract. R-39. On December 6,

2021, American Coastal filed its Motion to Dismiss Count I as an Improper Declaratory Relief Count and Answer and Affirmative Defenses to County II Breach of Contract. R-71.

On November 11, 2021, Patios West filed its Motion to Compel Appraisal and Stay the Action. R-85; *See* R-409, Appraisal Provision.

The trial court denied the Defendant's motion to dismiss on March 2, 2022. On March 25, 2022, American Coastal filed its second Answer and Affirmative Defenses to Patios West's Complaint. R-89. American Coastal plead several affirmative defenses, including the basis for the denial of the claim – the notice of the claim was untimely due to the timing of the hurricane's landfall – and also that the claim was allegedly premature relying on *Goldberg v. Universal Prop. & Cas. Ins. Co.*, 302 So. 3d 919 (Fla. 4th DCA 2020). R-94-100. Regarding that affirmative defense, American Coastal alleged Patios West failed to provide an estimate. R-96-97. However, **no estimate or Sworn Proof of Loss was requested during the initial adjustment of the claim, or prior to the denial of the supplemental claim.** (emphasis added). On April 3, 2022, Patios West filed its Reply to Affirmative Defenses. R-102.

On April 21, 2022, the trial court held the first of two hearings on Patios West's motion to compel appraisal. R-105, hearing transcript. After taking testimony on timely notice of the claim under § 627.70132, Fla. Stat., the trial court ruled that the notice of the claim on September 10, 2020, was timely pursuant to the statute and the Policy, and rejected the Defendant's stated reason for denying the claim in its March 3, 2021 denial letter. R-195-198. The trial court did not rule on any other issue at that time.³

On May 6, 2022, Patios West filed its Notice of Withdrawal of Motion to Compel Appraisal and Stay the Action. On May 17, 2022, the trial court entered its Order on Patios West's Motion to Compel Appraisal and Stay the Action, recognized the notice of withdrawal, and did not rule on the motion "at this time." R-214.

On May 27, 2022, Patios West *sua sponte* provided an estimate to Defendant. R-216.

³ During the hearing, the trial court was advised that there was never a request for a Sworn Proof of Loss. And the preparation of an estimate was cost prohibitive costing tens of thousands of dollars and was not Patios West's duty under the Policy's Duties In The Event Of Loss Or Damage unless requested. R-121-122.

On June 14, 2022, Patios West filed its Renewed Motion to Compel Appraisal and Stay the Action. R-294.

On October 31, 2022, the trial court held a second hearing on Patios West's Renewed Motion to Compel Appraisal and Stay the Action. R-301, hearing transcript. Defendant's corporate representative, Mr. Kevin Hoff, testified that **there was never a request for documentation, or post-loss compliance, during the original adjustment of the claim.** R-313-314. (emphasis added). After inspecting the Property with Patios West's' representatives, in March 2018, American Coastal sent its May 7, 2018, coverage determination letter and alleged that it only found covered damage to 3 of the 20 buildings on the Property; thus, resulting in a partial denial of the claim. R-315-316. Mr. Hoff confirmed that the May 7, 2018 letter did not request any post-loss compliance, including a Sworn Proof of Loss, or any other information: "This is not a request for information letter. I would – I am admitting that." R-320:10-11. (emphasis added).

After Patios West gave notice of the claim on September 10, 2020, American Coastal sent a Reservation of Rights letter dated September 14, 2020. R-321. Mr. Hoff admitted that American Coastal

took the position that it would not work with Patios West on the supplemental claim as it was considered late notice due to the timing of the landfall on Cudjoe Key. R-323.

Q. Sir, this policy has a section entitled "Duties After Loss." Does it not?

A. Yes, it does.

Q. And that section specifically, in black and white, states that the carrier has the option to request a sworn proof of loss, an estimate, and other categories of documents specifically. Does it not?

A. It does.

Q. And you never did that, Correct? Neither on the original claim nor on the supplemental claim, correct?

A. Well, on the supplemental claim, you're right because of the time frame that the claim was turned in. We felt like it was beyond the three-year statute, so there would've been no reason. If we would've been asking for that kind of information at that time, then we would've been saying well, you do have a supplemental claim. But we were looking for information that would help us indicate that yes, there is a supplemental claim, such as an estimate or any kind of receipts or invoices. Anything –

Q. That –

A. – shows that there actually additional damage than what our –

Q. Your testimony today is not reflected in any language on the letter before us. In fact, the letter before us says we're not working with you because you're late.

A. Well, at this point, you're right. This was the – That was the issue was that we felt like they had plenty of opportunity to present to us a claim if they felt like that the previous claim was not handled or adjusted appropriately, and that was not done.

R-324:12-25-325:1-19.

Mr. Frank Inguanzo testified on behalf of Patios West. During the walk-thru inspection in May 2018, he informed American Coastal's representatives that the damages to the Property were significant.

Q. Did you give the insurance company during the Walk-thru in May, or any time before it, did you tell them what you believed the claim was worth?

A. Absolutely, while I was walking with the adjusters and walking the roofs with the engineers. I basically told them that this was somewhere between a four, five million dollar claim involving all the roofs and involving the damages to the interior units, which we walked and inspected and photographed and so forth and so on.

Q. Was the insurance company aware of your dissatisfaction with their treatment of the claim?

A. Yes.

* * *

Q. In 2020, did one of your employees or assistants send an email expressing that the claim was still active and basically ongoing?

A. Correct.

R-338:25-339:1-9 and 15-20; 304:25-305:1-3. As confirmed by Mr. Hoff, American Coastal did not request a sworn proof of loss or estimate at that time.

On cross he confirmed that he told the desk examiner that he did not agree with the May 2018, coverage determination.

A. I believe I had conversations with the desk examiner, specifically advising her that we didn't agree with that position and that we were still handling the claim and moving forward with whatever we were going to decide to do on this claim. But it was a partial denial and even the \$14,000, if I recall correctly, didn't cover the damages to the interior of the units that had suffered damages, because there was substantial damage to the interior units. So I don't know what the \$14,000 number actually entails. I could tell you that the damages were severe there
--

R-343:11-21. With regard to the May 7, 2018, initial coverage determination letter it states: "However, notwithstanding, if you have any other information or documentation that was not previously provided to us that may impact the coverage determination, please forward it as soon as possible for our review." Mr. Inguanzo testified that at that time there was no other information or documentation requested by American Coastal that had not already been provided.

R-340. He confirmed that the letter of September 10, 2020, was sent

to put American Coastal on timely notice of a supplemental claim and that the file was not closed and that his firm continued to handle the claim. R-344:4-16.

Each side presented closing arguments.⁴ Patios West’s counsel argued that the statute had been complied stating in part:

. . . [B]ut this policy specifically requires the carrier to request the information. This is not a State Farm policy that puts the onus on the plaintiff to turn over the documentation gratis or prophylactically. This is a policy that requires them to request it and they never did.

So we are not in a scenario where we missed the post-loss obligation. They never asked for anything other than an inspection and time for them to come up with their position. We gave them an inspection. We gave them that time. They understood that effectively, we were in this, you know, we were in dispute.

...

⁴ Patios West is including part of the closing argument from the second October 31, 2022, hearing relevant to a misrepresentation being made by American Coastal in its Petition. American Coastal repeats in the Petition that Patios West argued that no notice was required: “To the contrary, [Patios West] argued that no notice was required at all because the claim ‘was basically adjusted and we’re just unhappy.’ ” Petition at 15. That is a mischaracterization of the closing argument at the second hearing below lacking candor. Patios West stated affirmatively that it complied with the notice requirement of the statute during the hearing. Moreover, the issue of whether or not the notice was timely pursuant to the statute was the issue ruled on by the trial court during the first hearing held on April 21, 2022. R-195-197, trial court ruling on timely notice.

We briefed – we briefed the case, Judge. It was submitted in our papers like you asked and, you know, the memorandum holds true in our papers that were not responded to. As to what we think, I think the first stage is, I humbly would ask you look at the insurance company's behavior. They under-adjusted it after being given a full Walk-thru and explanation of the damages. They never requested any of the PLOs that they could have requested that would've put Mr. Inguanzo to work in drafting an estimate earlier on and there's no requirement to do it. And, you know, to produce and give over documentation that's not requested can turn into a liability.

Had they requested it and we had not done it, it'd be a different conversation. *Past that, we re-opened the claim to keep it timely, expressed to them we were still working. We're still here. We're still, you know, dissatisfied. And they sent back a letter saying they would not work with us at all. I think under this fact pattern and the case law that basically dictates if at the time of the hearing we've complied, if they had required it. If they had requested a [sworn proof of loss] and if they had requested an estimate and we were here and we had done it before the hearing, it would be right.*

...

Yeah, my quick response to the statutory argument that was just presented to Your Honor is that this claim falls out of – We feel we met the letter of the Statute. In an abundance of caution, we think we fall outside of the requirement to comply with the Statute because this is really a claim that was set out and denied by the carrier in part, covered in part.

...

We don't feel that we fall into the reopen or supplemental claim scenario because it was basically adjusted and we're just unhappy. In other words, we could've just filed a

lawsuit that, you know, on that -- at that time, as opposed to reaching out to them and saying, hey, we're still here, we're still working. When they decided not to work with us and say, you're late, that's when the lawsuit followed.

R-348:20-25-349:1-6 and 14-25-350:1-12; 352:25-353:1-6; 353:21-25-354:1-3. (emphasis added). Therefore, Patios West's counsel stated affirmatively that notice pursuant to § 627.70132, Fla. Stat. was complied with and explained the compliance. The alternative argument was that Patios West could have filed suit earlier without the notice but chose to work with American Coastal, to what now was clearly to its detriment.

At the conclusion of the hearing, the trial court ruled that under *Goldberg*, Patios West was required to provide more than notice to make a supplemental claim under § 627.70132, Fla. Stat. and the Policy. R-354-355. Patios West was also allegedly required to provide an estimate of its damages even though American Coastal did not request one, or any other post-loss compliance for that matter, regarding the claim and neither the statute nor the Policy requires one.

On November 3, 2022, the trial court denied the motion for the reasons stated on the record. R-366.

The Appeal

The Third District construed § 627.70132, Fla. Stat. from the plain language of the statute, which the Policy mirrors. *Patios West Condo. Assoc., Inc. v. American Coastal Insurance Co.*, 897 So. 3d 893, 897-98 (Fla. 3d DCA 2024). It found the neither the statute nor the Policy requires the notice of a supplemental/re-opened claim be accompanied by a damage estimate or the like. *Id.* at 898. Only that notice of the claim be made “in accordance with the terms of the policy,” and both the statute and the policy define a supplemental/re-opened claim as an “additional claim for recovery” from the same, previously adjusted event. *Id.* The contents of the September 10, 2020 letter and the plain language of the statute provided American Coastal with the required notice of Patios West’s supplemental or re-opened claim pursuant to the statute. *Id.* at 898-99. American Coastal did not request a sworn proof of loss, damages estimate, or similar documentation and only solicited information on the timing of the notice claim. *Id.* at 899.

The Third District distinguished *Goldberg* first by stating that *Goldberg* decided whether an insured was required to submit a supplemental claim before filing suit but *Goldberg* did not decide the

ancillary question of what would have constituted a legally sufficient notice of a supplemental claim under the statute. *Id.* at 899-900. However, if *Goldberg* did hold a competing estimate was required, then the Fourth District misconstrued § 627.70132, Fla. Stat. Neither the statute (nor the Policy) require an estimate. *Id.* at 900-01.⁵ The statute is not a supplemental claim statute but a notice of a supplemental claim statute. *Id.* Nowhere does the statute require the notice “set[] forth those damages . . . in excess of what the insurance company had already paid.” *Id.* citing *Goldberg*, 302 So. 3d at 923. Rather, the statute merely requires notice of a supplemental or reopened claim be “given to the insurer in accordance with the terms of the policy” that constitutes an “additional claim for recovery” for losses from “the same hurricane.” *Id.* at 901 citing § 627.70132, Fla. Stat. The notice in the instant case satisfies those statutory requirements and is legally sufficient. *Id.* at 901. Finally, the Third District concluded that “[i]f the Legislature intended the statute to require more in a notice of supplemental/reopened claim under §

⁵ During oral argument, American Coastal’s attorney conceded that the statute does not include “any language with regard to an estimate.” *Patios West*, 388 So. 3d at 898 n. 3.

627.70132, Fla. Stat. it surely could have (and presumably would have) done so. It did not.” *Id.* The order on appeal was reversed.

SUMMARY OF THE ARGUMENT

Under a plain reading of § 627.70132, Fla. Stat. an estimate is not required when making a supplemental claim. Statutory interpretation in any case begins with the actual language used in a statute because legislative intent is determined first and foremost from the statute’s test. If it is clear and unambiguous the statute must be given its plain and obvious meaning. A court may not rewrite the statute or ignore the words chosen by the Legislature so as to expand its terms. The Third District correctly found Patios West’s notice of a supplemental claim in its October 10, 2020 letter complied with § 627.70132, Fla. Stat. under the plain reading of the statute. The contents of the letter, taken together, and read in light of the plain language of § 627.70132, Fla. Stat. provided the requisite notice to American Coastal of Patios West’s supplemental or reopened claim pursuant to that statute. Further, to hold that the statute requires something more than notice (like an estimate) in giving effect to the text of the statute would violate the rule of statutory construction - courts may not extend, modify, or limit the statute's express terms

or its reasonable or obvious implications because to do so would be an abrogation of legislative power. In this matter, there was a timely notice of a supplemental claim pursuant to the plain meaning of § 627.70132, Fla. Stat.

The terms of the Policy do not require an estimate. The language of the Policy tracks the statute. The rules governing policy interpretation mirror statutory interpretation. The Policy by its plain language/meaning requires that only notice of a supplemental/re-open claim be given within 3 years. The September 10, 2020, letter from Epic provided the requisite notice as found by the Third District. The Policy's provisions regarding a supplemental/re-opened claim does not require the submission of a sworn proof of loss, damage estimate, or similar documentation. To find Patios West had a duty to provide an estimate, would rewrite the terms of the Policy which is not allowed.

The duty to request an estimate or sworn proof of loss is affirmatively on American Coastal pursuant to the Policy it drafted. To graft a requirement that an estimate, sworn proof of loss, or similar documents related to damages by provided *sua sponte* would rewrite the Policy's plain, unambiguous terms. It is not required upon

the initial notification or *sua sponte* after an event. It would be illogical to place a duty on Patios West that does not exist and one that American Coastal affirmatively placed on itself when it drafted the Policy. Indeed, at the time of oral argument below American Coastal conceded that the statute, and by its terms then, the Policy do not require that an estimate be provided with a supplemental claim.

Goldberg was wrongly decided. As found by the Third District, even if the Fourth District in *Goldberg* found that an estimate was required pursuant to § 627.70132, Fla. Stat., nowhere does the statute state an estimate required. That is because § 627.70132, Fla. Stat. is a notice of supplemental claim statute, and not a supplemental claim statute as correctly found by the Third District. In order for this Court to find *Goldberg* was correctly decided it would be required to rewrite the statute (and the Policy) which it cannot do. Even American Coastal admits in its Petition that the Fourth District's decision in *Goldberg* does not require an estimate. ("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.”). To do so, would require the addition of the following language in the statute: “A claim, supplemental claim, or reopened claim under an insurance policy. . . is barred unless notice [**and an estimate of your damages**] of the claim, supplemental claim, or reopened claim was given to the insurer in accordance with the terms of the policy” The language in the Policy would likewise require the same change to add the same language: “A claim, supplemental claim, or reopened claim for loss or damage caused by windstorm or hurricane is barred unless notice [**and an estimate of your damages**] of the claim, supplemental claim, or reopened claim is given to American Coastal in accordance with the terms of the policy. . . .” Neither the statute, nor the Policy require an estimate.

Goldberg is factually distinguishable. The insured in *Goldberg* was affirmatively asked to provide an estimate (after it informed the insurer it had one in its possession) in compliance with the terms and conditions of the policy at issue in that matter and did not provide it. That is distinguishable because American Coastal never requested an estimate or sworn proof of loss as was its duty under the Policy and there is no dispute that Patios West complied with all the conditions and provisions of the Policy, and with American

Coastal's requests. Indisputably, *Goldberg* is fact specific and not analogous to this case. Because *Goldberg* is fact specific, *Patios West* suggests that jurisdiction was improvidently granted as *Goldberg* is not in express and direct conflict with the decision in *Patios West*.

The Third District correctly found that the issue in *Goldberg* was whether or not an insured was required to give notice of a supplemental/re-opened claim at all but did not define what constitutes sufficient notice. Because the Fourth District suggested an estimate would be an example of a supplemental claim but did not decide what constitutes a legally sufficient supplemental claim, which the Third District did in this matter, *Goldberg* is not in direct express conflict with this matter. Respondent respectfully suggests that jurisdiction was improvidently granted as a result.

American Coastal's case law is not on point, is otherwise unhelpful, and/or factually distinguishable. Moreover, American Coastal conceded during oral argument below that the statute does not require an estimate. In its Petition, it admits the Fourth District in *Goldberg* "did not require an estimate" just that one would fall within the definition of a supplemental claim.

Finally, American Coastal mischaracterizes *Patios West*'s

argument regarding notice. In discussing its case law, American Coastal states: “The common theme in all of these cases is that 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.’” That is a gross mischaracterization of the argument below and the facts of the case. First, the issue that was decided by the trial court during the first hearing on April 21, 2022, was whether the notice given was timely. “So that I believe the notice was timely, especially with some testimony with possible the eye passing over at 10:47”; So it seems to me that the notice itself may have been timely. The sufficiency of the notice, however, is subject to further analysis, further research.” The Third District recognized that was the issue decided during that hearing: “The trial court held a hearing and determined that, as to timeliness, ACIC incorrectly interpreted the three-year deadline, and conceded that Patios West timely filed its notice of supplemental/re-opened claim. The trial court did not make any further determinations at that time.” Second, the language relied on by American Coastal from the second hearing to make its specious

argument was a secondary argument. As set forth in the Statement of the Case and Facts *supra*, the primary argument in closing during the second hearing was that notice was sufficient under the statute. In the alternative, Patios West argued it could have sued when the original adjustment of the claim was made because it was not satisfied with payment in the amount of mere \$14,000 worth of damages to a 20 building complex. To state that Patios West argued “that no notice was required at all” ignores the trial court’s ruling at the first hearing, the recognition of that ruling by the Third District, and the record before this Court.

The decision of the Third District must be approved.

STANDARD OF REVIEW

Statutory construction is a question of law and is subject to *de novo* review. *W. Fla.. Reg’l Med. Ctr., Inc. v. See*, 79 So. 3d 1, 8 (Fla. 2012).

“[I]nsurance policy interpretation . . . is a question of law, subject to *de novo* review.” *Altman Contractors, Inc. v. Crum & Forester Specialty Ins. Co.*, 232 So. 3d 273, 276 (Fla. 2017) quoting *Penzer v. Transp. Ins. Co.*, 29 So. 3d 1000, 1005 (Fla. 2010).

ARGUMENT

I. PATIOS WEST WAS NOT REQUIRED TO PROVIDE AN ESTIMATE WITH ITS TIMELY NOTICE OF A SUPPLEMENTAL CLAIM PURSUANT TO § 627.70132, FLA. STAT. OR THE POLICY

A. Under a Plain Reading of § 627.70132, Fla. Stat. an Estimate is not Required when Making a Supplemental Claim

It is axiomatic that statutory interpretation in any case “begin[s] with the actual language used in the statute because legislative intent is determined first and foremost from the statute's text.” *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)). “When the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning.” *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)). Simply stated, a court “may not ‘rewrite the statute or ignore the words chosen by the Legislature so as to expand its terms.’” *State v. Gabriel*,

314 So. 3d 1243, 1248 (Fla. 2021) (quoting *Knowles v. Beverly Enters.-Fla., Inc.*, 898 So. 2d 1, 7 (Fla. 2004)). See also, *Patios West*, 388 So. 3d at 901 citing *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—is the words of the bill that they voted to make law”))). The plain text of § 627.70132, Fla. Stat. is unambiguous, and this Court need look no further than its ordinary meaning to determine legislative intent.

Patios West complied with § 627.70132, Fla. Stat. under the plain reading of the statute. The version of § 627.70132, Fla. Stat. in effect at the time reads:

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. (emphasis added).

The Third District followed the rule that a court must begin with the plain meaning of the statute. *Patios West*, 388 So. 3d at 897 (“The answer to this question follows straightforwardly from the plain language of section 627.70132, Florida Statutes (2017).”). The Third District was correct in that the statute’s plain meaning requires a supplemental/re-opened claim be made “in accordance with the terms of the policy” and defines a supplemental/re-opened claim as an “additional claim for recovery” from the same or previously adjusted event. *Patios West*, 388 So. 3d at 898. In ruling *Patios West*’s letter complied with the statute, the Third District found:

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.”

The contents of the letter, taken together, and read in light of the plain language of section 627.70132, provided the requisite notice to ACIC of Patios West’s supplemental or reopened claim pursuant to that statute.

Patios West, 388 So. 3d 898-99. (emphasis in the original).

To hold that the statute requires something more than notice (like an estimate) would violate another rule of statutory construction. In giving effect to the text of a statute, courts may not extend, modify, or limit the statute's express terms or its reasonable or obvious implications because to do so would be an abrogation of legislative power. *See McLaughlin v. State*, 721 So. 2d 1170, 1172 (Fla. 1998); *Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984).

In this matter, there was a timely notice of a supplemental claim pursuant to the plain meaning of § 627.70132, Fla. Stat. The decision of the Third District must be approved.⁶

⁶ In contrast to § 627.70132, Fla. Stat., which only requires notice, Florida’s new property pre-suit statute § 627.70152, Fla. Stat., requires a detailed estimate of damages before suit is filed. The

Legislature clearly knows how to draft a statute that requires more than notice but it did not do that here. § 627.70152, reads in relevant part:

(3) Notice.--

(a) As a condition precedent to filing a suit under a property insurance policy, a claimant must provide the department with written notice of intent to initiate litigation on a form provided by the department. Such notice must be given at least 10 business days before filing suit under the policy, but may not be given before the insurer has made a determination of coverage under s. 627.70131. Notice to the insurer must be provided by the department to the e-mail address designated by the insurer under s. 624.422. The notice must state with specificity all of the following information:

1. That the notice is provided pursuant to this section.

...

4. If the notice is provided following a denial of coverage, an estimate of damages, if known.

5. If the notice is provided following acts or omissions by the insurer other than denial of coverage, both of the following:

a. The presuit settlement demand, which must itemize the damages, attorney fees, and costs.

b. The disputed amount.

Documentation to support the information provided in this paragraph may be provided along with the notice to the insurer.

§ 627.70152(3)(a), Fla. Stat. (2021) (amended 2022 as to other provisions in the statute).

B. The Terms of the Policy do not Require an Estimate

The statute requires notice of a supplemental/re-opened claim be made “in accordance with the terms of the policy.”

The relevant language in the Policy’s Duties In The Event Of Loss Or Damage regarding supplemental/re-opened claims tracks the language of the statute. It reads:

3.e. 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.**

R-385. (emphasis added).

Under Florida law, policy interpretation is governed by general rules of contract analysis. The rules governing policy interpretation mirror statutory interpretation in several ways. Under Florida law, the interpretation of insurance contracts, such as the commercial general liability policy in this case, is governed by generally accepted rules of construction. *U.S. Fire Ins. Co. v. J.S.U.B., Inc.*, 979 So. 2d 871, 877 (Fla. 2007). “Insurance contracts are construed according

to their plain meaning. Ambiguities are construed against the insurer and in favor of coverage.” *Taurus Holdings, Inc. v. U.S. Fid. & Guar. Co.*, 913 So. 2d 528, 532 (Fla. 2005). However, courts only look to the rules of construction “when a genuine inconsistency, uncertainty, or ambiguity in meaning remains after resort to the ordinary rules of construction.” *Id.* (quoting *State Farm Mut. Auto. Ins. Co. v. Pridgen*, 498 So. 2d 1245, 1248 (Fla. 1986)). It is axiomatic that courts may not “rewrite contracts, add meaning that is not present, or otherwise reach results contrary to the intentions of the parties.” *Id.* (quoting *Pridgen*, 498 So. 2d at 1248). Insurance contracts are construed according to their plain language. *Fayad v. Clarendon Nat’l Ins. Co.*, 899 So. 2d 1082, 1086 (Fla. 2005).

The Policy by its plain language/meaning requires that only notice of a supplemental/re-open claim be given within 3 years. The September 10, 2020, letter from Epic provided the requisite notice as found by the Third District. *Patios West*, 388 So. 3d at 898-99. The letter complied with all the affirmative notice requirements in the Policy regarding the supplemental claim. The provisions regarding a supplemental/re-open claim does not provide that Patios West submit a sworn proof of loss, damage estimate, or similar

documentation. To find Patios West had a duty to provide an estimate, would rewrite the terms of the Policy which is not allowed. *Taurus*, 913 So. 2d at 532.⁷

Besides the plain meaning of the Policy does not require an estimate, the duty to request an estimate or sworn proof of loss is affirmatively on American Coastal under the Duties In The Event Of Loss provision it drafted. R-384, Policy at 3.a.(8). American Coastal placed the duty to request a sworn proof of loss (estimate) and provide the “necessary forms” on itself, not on Patios West, when it drafted the Policy. To graft the requirement that an estimate, sworn proof of loss, or similar documents related to damages be provided *sua sponte* would rewrite the Policy’s plain, unambiguous terms. An estimate is

⁷ Not only did American Coastal acknowledge at oral argument that § 627.70132, Fla. Stat. does not “include any language with regard to an estimate,” it acknowledges in its Petition that the Fourth District’s decision in *Golberg* did not require an estimate, only that an estimate would fall within the definition of a supplemental claim. “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.” Petition at 13. However, that does not answer what is sufficient notice under the statute. The Third District properly answered that question in its decision.

not required upon initial notification. Nor is it even required at any time *sua sponte* after an event. That would be nonsensical.

Doing so would place a duty on Patios West that does not exist and one that American Coastal affirmatively placed on itself when it drafted the Policy. But as set forth in the Statement of the Case and Facts, once American Coastal received the September 10, 2020, letter, it did not request a sworn proof of loss, estimate, or similar documentation. The only thing that American Coastal sought in its September 14, 2020 letter as part of its investigation was in regard to the timing of the notice of the claim and why it was not provided before the eye of the storm passed over Cudjoe Key.

American Coastal's notice to re-open of this claim was received on September 10, 2020 at 1:36 p.m. Thus, it appears that this claim is barred by the limitations period contained in Florida Statute Section 627.70132. According to the National Weather Service, "[t]he eye made landfall in Cudjoe Key at 9:10 am. Therefore, any claims submitted after 9:09 am EST are barred per the above referenced statute. Please see the below link to the National Weather Service's Report on Hurricane Irma for reference.

R-61. American Coastal was clearly focused on the language in the statute and Policy regarding "when the hurricane first made landfall" to deny the supplemental claim. It certainly was not concerned with damages in its investigation even though it had the right and duty

under the Policy to request a sworn proof of loss, or estimate. It could do this by exercising its duty to request a sworn proof of loss or estimate, and provide the necessary forms pursuant to the terms of the Policy and § 627.70131(2), Fla. Stat.

Neither the statute nor the Policy require anything more than notice. To construe the Policy to require Patios West to provide an estimate would re-write the terms of the Policy and that is not permitted. *Taurus*, 913 So. 2d at 532 (Courts may not “rewrite contracts, add meaning that is not present, or otherwise reach results contrary to the intentions of the parties.”). The Third District correctly found that the Policy requires only notice of the supplemental claim.

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 a 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 reason 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, 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....” § 627.70132, Fla. Stat. (2017).

Patios West, 388 So. 3d at 899. (emphasis in the original).

The Third District also correctly found § 627.70132, Fla. Stat. is not a supplemental claim statute – “it’s a notice of supplemental claim statute.” *Patios West*, 388 So. 3d at 900. (emphasis in the original). The decision of the Third District must be approved.

II. GOLDBERG WAS WRONGLY DECIDED AND IS CLEARLY DISTINGUISHABLE

A. *Goldberg* was Wrongly Decided - § 627.70132, Fla. Stat. is a not a Supplemental Claim Statute it is a Notice of a Supplemental Claim Statute

In distinguishing *Goldberg*, the Third District correctly found that § 627.70132, Fla. Stat. is not a supplemental claim statute but, rather, a notice of supplemental claim statute. The Third District found that even if the Fourth District in *Goldberg* found that an estimate was required under the statute, as it explained, and as set forth *supra*, nowhere does § 627.70132, Fla. Stat. require that an insured include a damages estimate when giving notice of the existence of a supplemental or re-opened 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. 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, as in 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 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.” § 627.70132. The notice in the instant case satisfies these statutory requirements and is legally sufficient.

Patios West, 388 So. 3d at 900-01. (emphasis in the original). The Third District is correct, the statute is a “notice of supplemental claim statute.” the Legislature clearly knows how to write a statute that requires both notice and an estimate as it did in § 627.70152(3)(a), Fla. Stat. See footnote 6, *supra*,

In order for this Court to find *Goldberg* was correctly decided - that an estimate be submitted with a supplemental/re-opened claim - it would be required to rewrite the statute (and the Policy) which it cannot do. § 627.70132, Fla. Stat. would have to read as follows in

order to find that more than mere notice was required.

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 [**and an estimate of your damages**] 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.

However, a court may not rewrite the plain language of a statute. See Section I.A., *supra*. For the same reason, this Court would have to rewrite the Policy to find that more than mere notice of a supplemental/re-opened claim is required. The Policy would have to read as follows:

3.e. A claim, supplemental claim, or reopened claim for loss or damage caused by windstorm or hurricane is barred unless notice [**and an estimate of your damages**] 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.

Once again the rules of construction do not allow for the rewriting of the Policy in this manner. See Section I. B., *supra*. If *Goldberg* is followed it sets a dangerous precedent. Essentially, the import of *Goldberg*'s analysis is that policy language does not matter. This is especially concerning given that the carriers are the ones that write policies and can dictate exactly what insureds are required to provide to them after a loss. However, based upon *Goldberg*, carriers are free to deny claims based upon unwritten terms. This hardly seems fair to the average policyholder who has read their policy and complies with its terms.

Because § 627.70132, Fla. Stat. is a “notice of supplemental claim statute” that establishes an outside time limit of three years within which Patios West was required to give notice of the existence of a supplemental claim, and does not require an estimate of damages be provided with that notice, Patios West’s September 10, 2020, notice satisfied the statutory requirements and was legally sufficient. *Patios West*, 388 So. 3d at 898-99.

B. *Goldberg* is Factually Distinguishable

Unlike *Patios West*, the insured in *Goldberg* was affirmatively asked to provide an estimate in compliance with the terms and conditions of the policy at issue in that matter and did not provide one. That makes this case distinguishable because American Coastal never requested an estimate or sworn proof of loss as was its duty under the Policy. Indisputably, *Goldberg* is fact specific and is not analogous to this case.

In *Goldberg*, the insured submitted a Property Loss Notice to his insurer Universal Property and Casualty Insurance Company (“Universal”) for loss caused by Hurricane Irma. *Goldberg*, 302 So. 3d at 921. Universal adjusted the loss and issued payment for the actual cash value of the loss, less the deductible. *Id.* Universal sent a letter on the same day advising that the policy allowed for recovery of replacement costs that are recoverable as work is performed and expenses incurred. *Id.* It further stated that: “Once any additional expenses are verified, we will evaluate your eligibility for disbursement of the recoverable depreciation.” *Id.* Three weeks later, *Goldberg* called Universal and “advised that he had a proposal which was higher than” Universal’s estimate. *Id.* at 921-22.

Universal requested Goldberg to forward the proposal, but he never did. *Id.* at 922. (emphasis added). This was confirmed in Universal’s briefing in the Fourth District.

Mr. Saenz, testified, on November 8, 2017, Mr. Goldberg called to discuss “the estimate and payment breakdown.” (S.R. 251). During that conversation, “the insured advised that he had a proposal which was higher than what we had written it and we asked him to forward it.” (S.R. 269). Despite Universal’s invitation, Mr. Saenz testified that Plaintiff never provided any competing estimate.

Q. It is Universal’s position – Universal never received an estimate from the plaintiff, correct?

A. Yes.

Q. Universal had asked the plaintiff to provide one, correct?

A. Yes.

Goldberg v. Universal Prop. and Cas. Ins. Co., 2020 WL 2745176 (Fla. 4th DCA 2020), p. 10. (emphasis added).⁸ However, the insured never provided the proposal to Universal, despite the request. *Goldberg*, 302 So. 3d at 922. Approximately a month later (two months after the filing of the initial claim), Goldberg’s counsel sent Universal a letter of representation requesting various categories

⁸ This Court can take judicial notice of that brief and its contents pursuant to § 90.202(6), Fla. Stat.

of documents related to the claim,” stating “this office is requesting this information prior to commencing any litigation in the interest of attempting to amicably resolve this matter.” *Id.*

Counsel for Goldberg eventually called Universal, inquiring as to the status of the claim, but the next day filed a one-count complaint against Universal for breach of contract, alleging Universal refused to pay the full value of the claim. *Id.* Thereby, materially breaching the policy. *Id.* Universal filed its answer and affirmative defenses. *Id.* As an affirmative defense, Universal asserted that Goldberg “never filed a supplemental claim and never provided Universal with a separate estimate prior to filing suit.” *Id.* Universal moved for summary judgment based on the Goldberg’s alleged failure to file a supplemental claim. *Id.* After a hearing, the trial court granted Universal’s motion and entered judgment in its favor, finding that Goldberg “failed to submit a supplemental claim as required by the terms and **conditions** of the subject policy and Florida law, with resulting prejudice to Defendant.” *Id.* The Fourth District stated that the insured’s suit was premature because the insured had not yet submitted a supplemental claim because it **did not comply with the policy’s conditions**. 302 So. 3d at 925. (emphasis supplied).

Goldberg is distinguishable from the facts of this case because:

1) American Coastal never requested an estimate of damages from Patios West pursuant to its duty under the Policy; and 2) there is no dispute that Patios West complied with all the conditions and provisions of the Policy, and with American Coastal's requests.

First, at no time did American Coastal ever notify Patios West that it needed an estimate of damages. In *Goldberg*, the insured specifically told the carrier that he had an estimate of his damages and failed to provide one upon the insurer's request. *Goldberg*, 302 So. 3d at 922. More importantly in this matter, if American Coastal wanted an estimate of damages it had a duty under the Policy to request one but it chose not to exercise that duty. R-384, Policy 3. a. (8). At no point did American Coastal ever ask for sworn proof of loss, or provide the "necessary forms" to investigate the claim - which is its affirmative duty under the express terms of the Policy it drafted. This is factually different from *Goldberg*, wherein the insurer specifically asked the insured to provide the estimate he had in his possession but failed to do so. The failure to comply by the insured in *Goldberg* was a violation of the conditions of the policy.

Not only does American Coastal have an affirmative duty under

the Policy to request a sworn proof of loss/estimate and to provide the necessary forms, but Florida law also requires it. Pursuant to § 627.70131(2), Fla. Stat. American Coastal was required to provide the necessary claim forms. It failed to comply with that statutory duty.

Goldberg does not apply because it is distinguishable and fact specific.

Further, because *Goldberg* is fact specific, the cases are not in conflict, and Respondent respectfully suggests that jurisdiction was improvidently granted. This is so because the decision of the Fourth District in *Goldberg* is not in express and direct conflict with the decision of the Third District in this matter as required by Art. V, § 3(b)(3), Fla. Const.

C. *Goldberg* Determined Whether the Insured was Required to File a Supplemental Claim at All but did not Define what was Legally Sufficient Notice

In its analysis of the holding in *Goldberg*, the Third District determined 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 for the loss to the dwelling.” *Patios West*, 388 So. 3d at 899-900 citing

Goldberg, 302 So. 3d at 923. The Third District stated:

On appeal, 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 for the loss to the dwelling.” Id. at 923 (emphasis added). In considering this issue, the court explained that, once Universal adjusted the initial claim, any request “for additional payment for losses from the same hurricane fell within the meaning of an ‘additional claim for recovery ... for losses from the same hurricane’ which Universal ‘previously adjusted.’ ” Id. at 923. 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.

388 So. 3d at 899-900 (emphasis in the original). Because the Fourth District suggested an estimate would be an example of a supplemental claim but did not decide what constitutes a legally sufficient supplemental claim, which the Third District did in this matter, *Goldberg* is not in direct express conflict with this matter. Respondent respectfully suggests that jurisdiction was improvidently granted pursuant to Art. V, § 3(b)(3), Fla. Const.

III. AMERICAN COASTAL'S ARGUMENTS IN SUPPORT OF ITS PETITION ARE UNPERSUASIVE

A. American Coastal's Case Law is not on Point or Otherwise Unhelpful

American Coastal's argument starts by citing to case law that holds the plain meaning of a statute is always the starting point in statutory interpretation. Petition at 12. However, it fails to address the fact that by its terms § 627.70132, Fla. Stat. is a notice statute not a supplemental claim statute. More importantly, even American Coastal admits in its Petition that the Fourth District's decision in *Goldberg does not require an estimate*. Petition at 15 ("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."). This comports with its concession at oral argument that the statute does not include "any language with regard to an estimate." *Patios West*, 388 So. 3d at 898 fn. 3.

The case law relied upon in the Petition is unhelpful as none of the cases discussing supplemental claims deal with the statute at issue in this matter, or define what notice of a supplemental claim constitutes, and are otherwise factually distinguishable.

For instance, in *American Coastal Ins. Co. v. Ironwood, Ins.*, 330 So. 3d 570 (Fla. 2d DCA 2021), the insured “filed an additional claim for damage to doors and windows caused by the same hurricane.” *Id.* at 571. Nowhere in the opinion does it state that the insured presented an amount for the supplemental claim. Rather, and unlike what it did in this matter, in *Ironwood*, American Coastal concluded an investigation of the claim but the insured failed to respond.

In particular, American Coastal requested that Ironwood provide:

- 1) Sworn Proof of Loss;
- 2) All supporting estimates, invoices, receipts, and contracts for work relating to the subject loss;
- 3) All documentation received by the Insured from Moisture Intrusion Solutions relating to the subject loss;
- 4) Association board meeting minutes for the past five years;
- 5) Association maintenance records for the past five years (2014-2019);
- 6) Any photographs, videos or otherwise that depict the condition of the property at any time, both prior to and after the date of loss;
- 7) Any reports, including appraisals, prepared on behalf of the Association;
- 8) Any engineering, general construction, or expert reports pertaining to the subject loss and the damages being claimed; and
- 9) Any Certificates of Completion, Certificates of Satisfaction, final invoices, and evidence of paid invoices.

To all appearances, American Coastal’s requests for documents were reasonable.

330 So. 3d at 572. There American Coastal exercised its right and duty under the policy to request compliance with post-loss

obligations – something it chose not to do in this matter. It is clear American Coastal is certainly aware of how to investigate a supplemental claim. It asked for a sworn proof of loss and supporting estimates for example. *Id.* That is its duty under the Policy. However, instead of investigating Patio West’s supplemental claim after being put on notice pursuant to § 627.70132, Fla. Stat., it stated that it was only going to investigate the timing of the claim based on the hurricane’s landfall - apparently focusing on the language in the statute and Policy regarding reporting “within 3 years after the hurricane first made landfall.”

Lemon v. People’s Trust Ins. Co., 344 So. 3d 56 (Fla. 5th DCA 2022), is unhelpful. That case is predominantly about whether the insured’s cashing of the initial adjustment check was an accord and satisfaction. *Id.* at 57. After a month, the insured’s found more damage and a public adjuster advised the insurer of their supplemental claim. *Id.* at 58. The opinion does not state that a sworn proof of loss, or estimate, was sent with the supplemental claim. Rather, it states “[u]ltimately the Lemons submitted a Sworn Proof of Loss . . .” *Id.* There is no discussion whether the sworn proof of loss was requested by the insurer, or if it was the insurer’s duty

under the policy to request one like it is in this matter.

Allstate Ins. Co. v. Suarez, 833 So. 2d 732 (Fla. 2002), involved a supplemental claim. However, it does not state that a sworn proof of loss or estimate was provided with the supplemental claim. It merely states:

Allstate initially paid a Suarez claim based on damage from Hurricane Andrew in September of 1992. *See id.* However, in June of 1997, the Suarezes filed a supplemental claim and disputed the adequacy of the amount of the initial payment. *See id.* Allstate denied the supplemental claim, citing to the September 1992 payment as full reimbursement for the hurricane damage. *See id.*

Id. at 763. The case came before this Court from the Third District, which also merely noted that a supplemental claim was made: “The plaintiffs disputed the value of the payment by Allstate and, in June of 1997, submitted a supplemental claim.” *Allstate Inc. Co. v. Suarez*, 786 So. 2d 645, 646 (Fla. 3d DCA 2001). That case does not support American Coastal’s argument. The issue decided by the court in *Suarez* was whether the Florida Arbitration Code applied to appraisals in insurance policies which the court answered in the negative.

Citizens Prop. Ins. Corp. v. Mango Hill #6 Condo. Ass’n Inc., 117

So. 3d 1226 (Fla. 3d DCA 2013), the insured made a supplemental claim. *Id.* at 1227. However, Citizens, unlike American Coastal in this matter, investigated the claim and “requested the Association to submit sworn proof of loss to support the supplemental claim.” *Id.* It also inspected the property again. *Id.* *Mango Hill #6* is not on point either. And, the issue decided by the court in that matter was that “[t]he Florida Arbitration Code is not applicable to appraisal awards.” *Id.* at 1230.

State Farm Fla. Ins. Co. v. Fernandez, 211 So. 3d 1094 (Fla. 3d DCA 2017), is unhelpful. Although the insured submitted an estimate with the supplemental claim, State Farm affirmatively requires that a sworn proof of loss be provided by the insured within 60 days after the loss. That was an issue raised by counsel for Patios West at the time of the hearing below while refuting American Coastal’s argument. “. . .[B]ut this policy specifically requires the carrier to request the information. This is not a State Farm policy that puts the onus on the plaintiff to turn over the documentation gratis or prophylactically. This (American Coastal’s Policy) is a policy that requires them to request it and they never did.” R-348:20-25. Indeed, the insured in *Fernandez* did not use a State Farm Sworn

Proof of Loss Form (another requirement under its policy) and accepted it “in form only.” 277 So. 3d at 1095. Ultimately, the Third District held that the insured did not comply with post loss obligations by, among other things, submitting sworn proof of loss withing 60 days after the loss as required under the policy. *Id.*

In *Redlhammer v. ASI Preferred Ins. Corp.*, 337 So. 3d 421 (Fla. 3d DCA 2021), the insured provided an estimate with a supplemental claim to repair the home’s broken main drain line. *Id.* at 422. There is no indication whether ASI requested the estimate, or the policy at issue required that an estimate be provided *sua sponte* like the sworn proof of loss in a State Farm policy.

The cases that American Coastal relies on do not support its argument. More importantly, while the cases may involve a supplemental claim, the issue before this Court is what constitutes sufficient notice of a supplemental claim under § 627.70132, Fla. Stat. The Third District correctly found that the statute is not a supplemental claim statute, but rather notice of a supplemental claim statute. *Patios West*, 388 So. 3d at 900.

When the Legislature wants to require that an estimate be provided with a supplemental claim, it knows how to write one as

evidenced by § 627.70152, Fla. Stat. To require one in this matter would require this Court to rewrite § 627.70132, Fla. Stat. and the Policy at issue – something that is contrary to basic statutory interpretation and contract law related to construing policies of insurance.

B. American Coastal’s Characterization of Patios West’s Argument at the Time of the Hearing Below is Incorrect

In discussing the above referenced cases, American Coastal states:

The common theme in all of these cases is that in 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.”

Petition at 15. (emphasis added). That is a gross mischaracterization of the argument below and the facts of the case.

Indeed, the issue that was decided by the trial court during the first hearing on April 21, 2022, was whether the notice given was timely.

The Court finds that a reading of the statute within three years after the hurricane first made landfall, or the windstorm caused the covered damage – and I’m going to analogize this, because I think 365 days from a particular

point outward in time is not the correct reading of the statue.

I think when you start counting days and years, you have to give full count for the day.

So I believe that the request much like for example, a car accident for example or negligence, a car accident is four years from the date of the accident.

It's not four years from 10:00 o'clock in the morning when the accident happened.

Every calculation of time that we use in our rules of procedure, unless specifically delineated otherwise, usually includes up to the day of the event.

So that I believe the notice was timely, especially with some testimony with possible the eye passing over at 10:47.

Well, the eye, common knowledge is that's the center of the storm. That means that the other half of the storm is still coming through.

So it seems to me that the notice itself may have been timely.

The sufficiency of the notice, however, is subject to further analysis, further research.

R-196:1-25-197:1-12, April 21, 2022, hearing transcript. The Third District recognized this in its opinion: "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.” *Patios West*, 388 So. 3d at 896. Further, as set forth in the Statement of the Case and Facts, *supra*, during both hearings Patios West did in-fact state that it complied with the notice requirements of the statute during the hearing. *Id.*, *See also*, Transcript Second Hearing R-348:18-25-349:1-6 and 14-25-350:1-12; 352:25-353:1-6; 353:21-25-354:1-3, hearing transcript. Patios West made an alternative argument at the time of the second hearing that it could have sued when the original adjustment of the claim was made because it was not satisfied with payment in the amount of mere \$14,000 worth of damages to a 20 building complex. To state that Patios West argued “that no notice was required at all” ignores the trial court’s ruling, the recognition of that ruling by the Third District in its opinion, and the record before this Court.

IV. CONCLUSION

For the foregoing reasons, Patios West’s notice of a supplemental claim pursuant to § 627.70132, Fla. Stat. (2017), was sufficient. The decision of the Third District must be approved.

Respectfully submitted,

By: /s/ Paul B. Feltman

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed on December 20, 2024, via the Florida Courts E-Filing Portal and sent via e-mailed to:

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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 Bookman Old Style 14-Point font, and that the number of words in this brief total 12,311.