

IN THE FIRST DISTRICT COURT OF APPEAL
THE STATE OF FLORIDA

CINDY VO,

CASE NO. 1D2023-2228

Appellant,

L.T. No. 2023-CC-001750

vs.

SCOTTSDALE INSURANCE
COMPANY,

Appellee.

_____ /

APPELLEE'S ANSWER BRIEF

On appeal from the Circuit Court of the First Judicial Circuit Court
in and for Escambia County, Florida

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STATEMENT OF CASE AND FACTS

Appellee, Scottsdale Insurance Company (“Scottsdale”), issued a commercial insurance policy to Appellant, Cindy Vo (“Vo”), with a policy period of November 9, 2019 through November 9, 2020. [R. 14-118]. The policy included commercial property coverage for a property located in Pensacola, Florida. [R. 22, 77-118]. In September 2020, Vo reported a claim for damage to the subject property from Hurricane Sally. [R. 10]. Shortly thereafter, Scottsdale retained an independent adjuster who determined there was no storm damage to the exterior of the building which could have caused interior damage. [R. 123]. The independent adjuster also determined that there was wind damage to an exterior light. [R. 123]. In January 2021, Vo informed Scottsdale that she retained a public adjusting firm. [R. 123]. Subsequently, Vo’s public adjuster submitted an estimate of the claimed damages in the amount of \$38,584.35. [R. 123]. Scottsdale then retained a different independent adjuster to reinspect the property; the adjuster reached the same conclusion as the prior adjuster. [R. 123]. Following the reinspection of the subject property, Scottsdale communicated its coverage position to Vo and the public adjusting firm. [R. 123].

In April 2021, Vo filed suit against Scottsdale alleging breach of contract, and on May 17, 2021 she filed a civil remedy notice of insurer violations (“CRN”) with the Florida Department of Financial Services. [R. 119-22, 676-79]. The CRN asserted that Scottsdale violated nine statutory and five regulatory provisions. [R. 120-21]. On June 15, 2021, Scottsdale filed a response to the CRN detailing the claim handling and denying that it violated any Florida statute or regulation. [R. 122-23]. In its response, Scottsdale noted the form of Vo’s CRN was “mostly conclusory statements of alleged violations devoid of factual support.” [R. 123]. On July 1, 2021, an appraisal award of \$34,545.65 was returned in favor of Vo. [R. 125]. Scottsdale issued payment of the appraisal award, minus the applicable deductible, on July 22, 2021. [R. 387]. Vo voluntarily dismissed the action following payment. [R. 388].

On March 21, 2023, Vo filed the instant first-party bad faith action against Scottsdale alleging violation of sections 624.155 and 626.9541, Florida Statutes. [R. 9-13]. Scottsdale responded by filing a motion to dismiss based on three grounds: 1) failure to comply with the prerequisites of section 624.1551, Florida Statutes; 2) failure to state a cause of action; and 3) failure to comply with statutory

requirements for civil remedy notices. [R. 259-77]. Following a hearing, the trial court granted Scottsdale's motion to dismiss based on the first argument raised in the motion to dismiss. [R. 959-62, 967-90]. In granting the motion to dismiss, the trial court relied on the "extra contractual" nature of bad faith claims to reach the determination that the date of filing a plaintiff's complaint governed the applicability of section 624.1551. [R. 960-61]. This appeal followed.

STANDARD OF REVIEW

A trial court order granting a motion to dismiss is reviewed *de novo*. *Kopel v. Kopel*, 229 So. 3d 812, 815 (Fla. 2017). A trial court's determinations regarding statutory interpretation and the retroactive nature of a statute are also reviewed *de novo*. *Love v. State*, 286 So. 3d 177, 183 (Fla. 2019); *Kephart v. Hadi*, 932 So. 2d 1086, 1089 (Fla. 2006).

SUMMARY OF ARGUMENT

This Court should affirm the trial court decision dismissing Vo's bad faith action with prejudice because Vo failed to comply with the prerequisites to filing a statutory bad faith claim. Vo's arguments on appeal focus solely on whether section 624.1551 is applicable

retroactively pursuant to *Menendez v. Progressive Express Insurance Co.*, 35 So. 3d 873 (Fla. 2010). The remedial nature of section 624.1551 makes the test and principles set forth in *Menendez* inapplicable to the analysis of whether Vo's was required to comply with the statute. Moreover, *Menendez* is further distinguishable because it involved an amendment to Florida's personal injury protection statute, and section 624.1551 relates to bad faith claims. Because section 624.1551 is remedial, rather than substantive, the trial court correctly determined that the date of the filing of Vo's complaint controls whether the statute is applicable. Section 624.1551 requires a plaintiff to obtain an adverse adjudication against an insurer, through judgment or decree, that the insurer breached the insurance policy prior to filing a statutory bad faith lawsuit. It is undisputed that Vo did not comply with this directive and instead relied on the entry of an appraisal award in her favor. The plain language of the statute indicates that an appraisal award does not constitute an adverse adjudication. Accordingly, the trial court was correct in dismissing Vo's complaint for Vo's failure to obtain an adverse adjudication that Scottsdale breached the insurance contract *prior* to filing the statutory bad faith action.

Notwithstanding this Court's ruling on the applicability of section 624.1551, the trial court's ruling should be affirmed pursuant to the tipsy coachman rule. Prior to the creation of section 624.1551, the three prerequisites to filing a statutory bad faith claim were: "(1) determination of the insurer's liability for coverage; (2) determination of the extent of the insured's damages; and (3) *the required notice must be filed under section 624.155(3)(a).*" *Landers v. State Farm Fla. Ins. Co.*, 234 So. 3d 856, 859 (Fla. 5th DCA 2018). Scottsdale's motion to dismiss alternatively argued that dismissal was also required because Vo's CRN did not comply with the specificity requirements set forth in section 624.155. The remaining argument raised in support of dismissal concerned whether Vo's complaint failed to meet the basic pleading requirements for alleging bad faith. To the extent that this Court disagrees with the reasoning set forth in the trial court's order dismissing Vo's complaint, the two alternative grounds raised in Scottsdale's motion to dismiss support affirming the trial court's decision dismissing Vo's complaint with prejudice.

ARGUMENT

I. THE TRIAL COURT PROPERLY DETERMINED SECTION 624.1551, FLORIDA STATUTES, WAS APPLICABLE TO APPELLANT'S BAD FAITH CLAIM WITHOUT UNDERTAKING THE MENENDEZ ANALYSIS

Vo's initial brief relies on the application of the two-prong test set forth in *Menendez* to support the position that section 624.1551 is inapplicable to Vo's claims. Reliance on *Menendez* and the principle set forth therein is misplaced given that *Menendez* analyzed a substantive statute, whereas section 624.1551 squarely fits the definition of a remedial statute. Furthermore, *Menendez* involved an amendment to Florida's PIP statute which is inherently different from the statutory bad faith framework. *Village of El Portal v. City of Miami Shores*, 362 So. 2d 275, 278 (Fla. 1978).

When determining whether a statute is retroactive in nature, a key inquiry is whether the statute constitutes a remedial or substantive change. Generally, there is a presumption that substantive statutes operate prospectively absent clear legislative intent to the contrary. *Alamo Rent-A-Car v. Mancusi*, 632 So. 2d 1352, 1358 (Fla. 1994). To overcome this presumption, the legislation must clearly express an intent that it be applied retroactively, and

retroactive application must be constitutionally permissible. *Fla. Ins. Guar. Ass'n v. Devon Neighborhood Ass'n*, 67 So. 3d 187, 194 (Fla. 2011). Conversely, the presumption in favor of the prospective application does not apply to remedial statute. *Arrow Air v. Walsh*, 645 So. 2d 422, 423 (Fla. 1994). Instead, remedial legislation should be applied to pending cases in order to serve its intended purposes. *Orlando v. Desjardins*, 493 So. 2d 1027, 1028 (Fla. 1986). “A remedial statute is ‘designed to correct an existing law, redress an existing grievance, or introduce regulations conducive to the public good.’” *Adams v. Wright*, 403 So. 2d 391, 394 (Fla. 1981) (quoting Black’s Law Dictionary, 5th Ed., 1979).

In May 2022, the Florida Legislature created section 624.1551 as part of a broad property insurance reform to address “access and affordability of property insurance, and to mitigate insurance fraud in Florida’s property insurance market.” See Fla. S. Comm. On Approp., CS for SB 2-D (2022) Post-Meeting Staff Analysis (May 23, 2022). Later that year, the statute was amended with intent “to ensure policyholders in this state have access to quality, affordable private market property insurance.” Fla. S. Comm. On FP, CS for SB 2-A (2022) Post-Meeting Staff Analysis 2 (Dec. 12, 2022). These

legislative directives clearly indicate that section 624.1551 “introduce[d] regulations conducive to the public good.” *Adams*, 403 So. 2d at 394. Statutes, like section 624.1551, which are designed to protect consumers have been consistently designated as remedial by Florida courts. *See Capone v. Philip Morris United States*, 116 So. 3d 363, 376 (Fla. 2013) (concluding Act was remedial because legislative intent was to shift the losses of survivors to the wrongdoer.); *Fonte v. AT&T Wireless Servs.*, 903 So. 2d 1019, 1024 (Fla. 4th DCA 2005) (“FDUTPA is a remedial statute designed to protect consumers.”); *Blankfeld v. Richmond Health Care, Inc.*, 902 So. 2d 296, 298 (Fla. 4th DCA 2005) (stating the Nursing Home Resident’s Act is remedial where it was enacted in response to investigation that uncovered evidence of substantial elder abuse in nursing homes); *Adams*, 403 So. 2d at 394 (concluding statute was remedial in nature where it granted authority to trial judges to modify excess or inadequate verdicts in a motor vehicle liability suit in an effort to protect substantive rights of litigants).

Consistent with well-established principles of statutory construction, *Menendez* stands for the broad principle that

substantive statutes are presumed to operate prospectively. However, the Florida Supreme Court's analysis and application of this principle was narrowly tailored to Florida's PIP statute. More importantly, the crux of the *Menendez* holding is the court's determination that the presuit notice amendment resulted in substantive changes to existing law. 35 So. 3d at 880. The *Menendez* court noted the changes would "(1) impose a penalty, (2) implicate attorneys' fees, (3) grant an insurer additional time to pay benefits, and (4) delay the insured's right to institute a cause of action." *Id.* at 878. Section 624.1551 does not contain the characteristics at issue in *Menendez*. Because *Menendez* related solely to a substantive statute, it is not applicable remedial statutes, such as section 624.1551. *Menendez* is further distinguishable given the differences between the PIP and first-party bad faith statutory schemes. An insured's claim against a PIP insurer "is a first party claim in contract for failure to pay the contractual obligation for personal injuries sustained." *State Farm Mut. Auto. Ins. Co. v. Lee*, 678 So. 2d 818, 820 (Fla. 1996). Although PIP coverage and procedures are governed by statute, a first-party cause of action is related to damages arising out of the insurance contract. Conversely, first-party bad faith claims are considered

extracontractual because the available damages are unrelated to those an insured may recover under the insurance contract. See generally *Citizens Prop. Ins. Corp. v. Manor House, LLC*, 313 So. 3d 579, 583 (Fla. 2021). Accordingly, the trial court correctly determined that *Menendez* is inapposite to the resolution of the instant case given the differences in the statutory schemes. Thus, the trial court did not err in applying section 624.1551 to Vo's claim.

II. THE TRIAL COURT PROPERLY GRANTED SCOTTSDALE'S MOTION TO DISMISS BECAUSE APPELLANT FAILED TO SATISFY THE CONDITION PRECEDENT SET FORTH IN SECTION 624.1551, FLORIDA STATUTES

Section 624.155 authorizes an insured to bring a first-party bad faith action based on an insurer's violation of certain statutory provisions, including violation of section 626.9541. However, prior to bringing a suit for extracontractual damages under section 624.155, a plaintiff is required to comply with various statutory provisions. See *Talat Enters. v. Aetna Cas. & Sur. Co.*, 753 So. 2d 1278, 1283 (Fla. 2000). Section 624.1551 sets forth one of the prerequisites to bringing a statutory bad faith action, stating as follows:

Notwithstanding any provision of s. 624.155 to the contrary, in any claim for extracontractual damages under s. 624.155(1)(b), no action shall lie until a named or omnibus insured or a named beneficiary has established

through an adverse adjudication by a court of law that the property insurer breached the insurance contract and a final judgment or decree has been rendered against the insurer. Acceptance of an offer of judgment under s. 768.79 or *the payment of an appraisal award does not constitute an adverse adjudication under this section.* The difference between an insurer's appraiser's final estimate and the appraisal award may be evidence of bad faith under s. 624.155(1)(b), but is not deemed an adverse adjudication under this section and does not, on its own, give rise to a cause of action.

It is well established that statutory interpretation begins with the text of the statute. *Fla. Birth-Related Neurological Injury Comp. Ass'n v. Dep't of Admin. Hearings*, 29 So. 3d 992, 997 (Fla. 2010). "When the statute is clear and unambiguous, courts will not look behind the statute's plain language for legislative intent or resort to rules of statutory construction to ascertain intent. In such instance, the statute's plain and ordinary meaning must control." *Daniels v. Fla. Dep't of Health*, 898 So. 2d 61, 64 (Fla. 2005). The language of section 624.1551 is clear and unambiguous. The plain language of section 624.1551 mandates a plaintiff must establish, through an adverse adjudication, that the insurer breached the insurance contract prior to bringing an action for extracontractual damages. The acceptance of an offer of judgment or payment of an appraisal

award does not satisfy the condition precedent. This provision is applicable to any claim pursuant to section 624.155(1)(b).

Although the Court's analysis should end with the text of section 624.1551, examining its legislative history reinforces the meaning of the statute's mandate. The bill analysis and fiscal impact statement related to the version of section 624.1551 set forth above states that section 624.1551 was amended to "revis[e] conditions that must be met for a claim for extracontractual damages in civil remedy action against a property insurer." Fla. S. Comm. On FP, CS for SB 2-A (2022) Post-Meeting Staff Analysis 2 (Dec. 12, 2022). The bill analysis further explains that under the statute:

bad faith litigation for failure to settle a property insurance claim may not be filed until after the insured has established through adverse adjudication by a court that the insurer breached the insurance contract and a final judgment or decree has been rendered against the insurer.

Id. Additionally, the analysis interprets section 624.1551 based on the plain language of the bill, stating in relevant part:

While the newly created s. 624.1551, F.S, does not address the *Cammarata* [*v. State Farm Florida Insurance Co.*, 152 So. 3d 606, 607 (Fla. 4th DCA 2014)] decision directly because it does not address conditions precedent to bringing suit, the bill has the effect of receding from the decision to the extent it requires that a breach of contract be established in order to prevail in such a lawsuit.

Furthermore, the bill may eliminate the ability of a claimant to bring a statutory bad faith lawsuit where the parties have settled through informal means, or in the alternative dispute resolution or appraisal processes because a breach of contract *would not likely have been determined during those processes.*

Id.

Here, Vo filed a claim for extracontractual damages pursuant to sections 624.155 and 626.9541. [R. 10-13]. Based on the plain and obvious meaning of section 624.1551, Vo was required to obtain an adverse adjudication that Scottsdale breached the insurance contract *prior* to filing an action for extracontractual damages pursuant to section 624.155. Vo's claim is based on Scottsdale's payment of an appraisal award. [R. 10-11]. The statute specifically states that the payment of an appraisal does not constitute an adverse adjudication. Accordingly, the trial court correctly dismissed Vo's complaint with prejudice for failure to comply with the mandate of section 624.1551.¹

¹ Vo argues the trial court erred by dismissing her bad faith claim pursuant to section 626.9541 because 624.1551 has no bearing on bad faith claims brought pursuant to section 624.155(1)(b). This argument is fully addressed in sections III and IV of the Argument.

III. IN THE ALTERNATIVE, THE TRIAL COURT PROPERLY GRANTED SCOTTSDALE'S MOTION TO DISMISS BECAUSE APPELLEE'S CRN DID NOT COMPLY WITH SECTION 624.155, FLORIDA STATUTES

Scottsdale maintains the trial court correctly dismissed Vo's complaint based on noncompliance with section 624.1551; however, assuming *arguendo* that the statute is inapplicable to this case, this Court should consider alternative reasons why dismissal was proper. Under the tipsy coachman doctrine, appellate courts may affirm a trial court order that "reaches the right result, but for the wrong reasons," "if there is any basis which would support the judgment in the record." *Dade Cty. Sch. Bd. v. Radio Station WQBA*, 731 So. 2d 638, 644 (Fla. 1999); see also *Applegate v. Barnett Bank of Tallahassee*, 377 So. 2d 1150, 1152 (Fla. 1979) ("Even when based on erroneous reasoning, a conclusion or decision of a trial court will generally be affirmed if the evidence or an alternative theory supports it."). "The key to the application of this doctrine of appellate efficiency is that there must have been support for the alternative theory or principle of law in the record before the trial court." *Robertson v. State*, 829 So. 2d 901, 906-07 (Fla. 2002). The doctrine is applicable to orders granting motions to dismiss. See *Utah Power Sys. v. Dog*,

352 So. 3d 504, 512 (Fla. 1st DCA 2022); *Skupin v. Hemisphere Media Grp., Inc.*, 314 So. 3d 353, 357 (Fla. 3d DCA 2020); *Walters v. Ocean Gate Phase I Condo.*, 925 So. 2d 440, 443 (Fla. 5th DCA 2006). Below, Scottsdale also moved to dismiss Vo’s complaint based on the failure to comply with the statutory requirements for civil remedy notices. The notice requirements set forth in section 624.155(3)(b), Florida Statutes, are conditions precedent to bringing a bad faith action. See *Talat*, 753 So. 2d at 1283 (“We find that the requirements of written notice to the Department of Insurance and the insurer are conditions precedent to bringing an action under subdivision (1)(a) or (b).”). This alternative ground provides a separate basis for affirming the dismissal of Vo’s complaint with prejudice.

The statutory bad faith framework establishes various conditions that a plaintiff is required to satisfy prior to filing a first-party bad faith action. In addition to the “adverse adjudication” discussed above, on its own, section 624.155 establishes a separate precondition to filing a bad faith claim, whereby the insured *must* serve a civil remedy notice. “[T]he purpose of the notice is to facilitate and encourage good-faith efforts to timely settle claims before litigation.” *Landers*, 234 So. 3d at 859. To that end, section

624.155(3)(b) sets forth the information that *must* be included in the CRN to put the insurer on notice of the circumstances giving rise to the alleged violations and the corrective action required to remedy the violations.

In essence, the statute instructs the policyholder to “‘state with specificity’ information in the notice; to specify language of the statute, which the authorized insurer allegedly violated;’ and to ‘[r]eference . . . specific policy language that is relevant to the violation, if any.’” *Julien v. United Prop. & Cas. Ins. Co.*, 311 So. 3d 875, 878 (Fla. 4th DCA 2021). Failure to comply with the CRN requirements warrants the dismissal of the bad faith action with prejudice. *See Julien*, 311 So. 3d at 875; *see also Demase v. State Farm Fla. Ins. Co.*, 351 So. 3d 136 (Fla. 5th DCA 2022); *Rousso v. Liberty Surplus Ins. Corp.*, No. 10-cv-20554, 2010 U.S. Dist. LEXIS 82328, at *10 (S.D. Fla. Aug. 13, 2010). First-party bad faith actions are purely a creature of statute because Florida does not recognize first-party common law bad faith claims. *See Citizens Prop. Ins. Corp. v. Perdido Sun Condo. Ass’n*, 164 So. 3d 663, 667 (Fla. 2015). It is well-established that statutes in derogation of the common law must be strictly construed. *Fla. Steel Corp. v. Adaptable Devs., Inc.*, 503 So.

2d 1232 (Fla. 1986) (“It is a rule of statutory construction that any statute in derogation of the common law requires strict compliance with its provisions by one seeking to avail himself of its benefits.”). Heeding this principle of statutory construction, section 624.155 must be strictly construed. *Talat*, 753 So. 2d at 1283. It follows that a claimant must strictly comply with the notice requirements set forth in section 624.155(3)(b).

Here, Scottsdale’s motion to dismiss argued that dismissal was warranted because Vo’s CRN did not comport with the section 624.155(3)(b). [R. 274-76]. This position was reasserted at the hearing on the motion to dismiss. [R. 972, 975-77]. Vo’s CRN alleges Scottsdale violated nine statutory provisions and five administrative regulations. [R. 120-21]. Rather than “describe the facts and circumstances giving rise to the insurer’s violation”... “[t]o enable the insurer to investigate and resolve your claim,” Vo’s CRN set forth five paragraphs of boilerplate language. [R. 121-22]. The narrative is nearly devoid of claim-specific facts and sets forth conclusory statements and quotes statutory and regulatory language. [R. 122]. The only claim-specific facts included in the CRN were the name of the insured, the name of one adjuster, type of insurance policy, and

cure amount. [R. 122]. While Vo asserted “[t]he carrier has excluded a significant amount of damage as being the result of wear and tear” and “the Carrier refused to provide information regarding the cover portion of damages that fell below the deductible,” there is no factual basis for these conclusions provided in the CRN. [R. 122]. Clearly, Vo’s CRN failed to comply with the mandates of section 624.155(3)(b). These deficiencies were noted in Scottsdale’s response to the CRN. [R. 122].

The filing of a CRN is not a perfunctory task. It must contain sufficient information to provide the insurer with an adequate opportunity to cure the alleged wrongdoing. Insureds, such as Vo, must strictly comply with the statute’s directives. Vo’s CRN is invalid because it failed to comply with the specificity requirements mandated by section 624.155(3)(b). The generic boilerplate language in Vo’s CRN failed to provide Scottsdale with meaningful notice and the opportunity to fully respond to and cure the alleged wrongdoing. Vo was required to file a CRN in compliance with section 624.155 prior to filing a bad faith action. She did not. Under these circumstances dismissal of Vo’s complaint was proper. *See Julien*, 311 So. 3d at 879 (“Here, Julien did not substantially comply with

the specificity standard and this was more than a mere technical defect. Julien listed nearly all policy sections and cited thirty-five statutory provisions. As a result, we conclude the circuit court correctly determined that Julien failed to satisfy the requirement that the insured identify the specific statute and specific policy provision relevant to Universal Property's alleged violation."); *see also Rousso*, LEXIS 82328, at *14 ("If a simple 'you denied my claim' was sufficient to put insurers on notice, the sixty day cure period would be little more than a guessing game with the insurer attempting to correctly guess what errors the insured claimed it made in the claims handling process, or risk defending a bad faith action. This surely is not what the legislature had in mind when it created the civil remedy notice."). Thus, even though Appellee contends this court need not consider alternate reasons why the trial court's dismissal was proper, *see III supra*, applying the tipsy coachman doctrine, the trial court's dismissal of Vo's complaint is correct and should be affirmed.

IV. ALTERNATIVELY, DISMISSAL WAS PROPER BECAUSE APPELLANT FAILED TO STATE A CAUSE OF ACTION FOR BAD FAITH UNDER SECTIONS 624.115 AND 626.9541, FLORIDA STATUTES

Scottsdale maintains that the trial court correctly dismissed Vo's complaint for failure to comply with section 624.1551. In the alternative, the remaining ground asserted in Scottsdale's motion to dismiss supports affirming the trial court's decision under the tipsy coachman doctrine. In addition to noncompliance with section 624.155(3)(b), Scottsdale argued dismissal was required because Vo's complaint failed to meet the basic pleading requirements for alleging bad faith. [R. 272-74]. Standing alone, these pleading deficiencies support affirming the trial court decision dismissing Vo's complaint with prejudice.

A motion to dismiss for failure to state a cause of action tests the legal sufficiency of a complaint. "To survive a motion to dismiss, a complaint must allege 'sufficient ultimate facts' showing entitlement to relief." *Stein v. BBX Cap. Corp.*, 241 So. 3d 874, 876 (Fla. 4th DCA 2018). At the motion to dismiss stage, all factual allegations must be accepted as true and considered in the light most favorable to the plaintiff. *See Siegle v. Progressive Consumers Ins. Co.*,

819 So. 2d 732, 734 (Fla. 2002). However, “there is no obligation to accept internally inconsistent factual claims, conclusory allegations, unwarranted deductions, or mere legal conclusions made by a party.” *Shands Teaching Hosp. & Clinics, Inc. v. Est. of Lawson*, 175 So. 3d 327, 331 (Fla. 1st DCA 2015), disapproved on other grounds by grounds by *Nat’l Deaf Acad., LLC v. Townes*, 242 So. 3d 303, 314 (Fla. 2018). As such, “legal conclusions presented as allegations of fact, . . . are not deemed true.” *Point Conversions, LLC v. 1D19-4290, Omkar Hotels, Inc.*, 321 So. 3d 326, 328 (Fla. 1st DCA 2021). “[A] complaint that simply strings together a series of sentences and paragraphs containing legal conclusions and theories does not establish a claim for relief.” *Davis v. Bay Cty. Jail*, 155 So. 3d 1173, 1177 (Fla. 1st DCA 2014); *see also Maiden v. Carter*, 234 So. 2d 168, 170 (Fla. 1st DCA 1970) (“It is a fundamental principle of pleading that the complaint, to be sufficient, must allege ultimate facts as distinguished from legal conclusions which, if proved, would establish a cause of action for which relief may be granted”).

Vo’s complaint alleges a single count of first-party bad faith against Scottsdale pursuant to sections 624.155 and 626.9541. Rather than setting forth ultimate facts demonstrating entitlement to

relief, Vo's complaint relies on bare legal conclusions that merely regurgitate the relevant statutory provisions. Moreover, Vo's complaint contains few factual allegations, instead relying on conclusory statements devoid of factual support. Under these circumstances, dismissal with prejudice for failure to state a cause of action was proper. Thus, applying the tipsy coachman doctrine, the trial court's dismissal of Vo's complaint is correct and should be affirmed.

CONCLUSION

Based on the foregoing facts and legal authorities, Scottsdale Insurance Company, respectfully requests that this Court affirm the order granting Scottsdale's Motion to Dismiss.

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a correct copy hereof has been furnished via the Florida Court’s E-Filing Portal to: Chad A. Barr, Esq., Dalton L. Gray, Esq., Chad Barr Law (attorneys for Appellant) 238 N. Westmonte Drive, Suite 200, Altamonte Springs, FL 32714 (service@chadbarrlaw.com; linda@chadbarrlaw.com; chad@chadbarrlaw.com) on this 23rd day of April, 2024.

/s/ Aleida M. Mielke
Aleida M. Mielke, Esq.

CERTIFICATE OF COMPLIANCE

We certify that this brief complies with the font requirements set forth in Florida Rules of Appellate Procedure 9.045 and 9.210 by using Bookman Old Style 14-point font and that this brief contains 4,348 words.

/s/ Aleida M. Mielke
Aleida M. Mielke, Esq.