Filing # 188291885 E-Filed 12/19/2023 03:34:17 AM

IN THE FOURTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA

KEITH BORDE and DIANE BORDE,

Appellants,

vs.

PEOPLE'S TRUST INSURANCE COMPANY,

Appellee.
_____________________________/

Case No.: 4D2023-1990

L.T. Case No.: 50-2013-CA-2139-XXXX-MB

APPEAL FROM THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

INITIAL BRIEF OF APPELLANTS

/s/ Melissa A. Giasi
Melissa A. Giasi
Florida Bar No. 37807
melissa@giasilaw.com
Erin M. Berger
Florida Bar No. 14977
eberger@giasilaw.com
GIASI LAW, P.A.
400 North Ashley Drive, Suite 1900
Tampa, FL 33602
Phone: 813-816-1880
Counsel for Appellants

TABLE OF CONTENTS

Table of Contents .... I – iii

Table of Authorities .... iv – viii

References to Parties, Record on Appeal and Appendix to Initial Brief 1

Statement of the Case 1

Statement of the Facts 2

1. The OIR approves Form No. PTIC P033 (11/07) 2

2. The Initial Policy 3

3. The Pre-Loss Renewal Policies 4

   a. The 2009 Renewal Policy 4

   b. The 2010 Renewal Policy 5

4. The Preferred Contractor Endorsement, Form E023 (9/10) 5

5. The 2011 Renewal Policy 6

6. Insurance Company's "vipGOLD Priority Program" 8

7. Fla. Stat. § 627.4133 11

8. A storm damaged the Insureds' home 12

9. Homeowners sue Insurance Company 13

   a. The Second Amended Complaint 13

   b. Insurance Company's motion to dismiss 14

c. Insurance Company's answer and affirmative defenses 14

d. Homeowners' reply and avoidance of Insurance Company's affirmative defenses 16

e. Homeowners request leave to file a Third Amended Complaint 17

f. The parties' competing motions for summary judgment...............17

i. Homeowners' motions 17
ii. Insurance Company's motion...18
iii. The parties' responses...19
iv. The March 10, 2022 hearing 19

g. Homeowners' motions for reconsideration 20

h. Homeowners are denied leave to file their Third Amended Complaint, Final Judgment is entered against them, and they file this appeal...21

Summary of the Argument...22

Argument 23

I. THE TRIAL COURT COMMITTED ERROR WHEN IT DENIED HOMEOWNERS' MOTIONS FOR SUMMARY JUDGMENT...23

a. Standard of Review 23
b. Application of the Florida Insurance Code to this appeal 24
c. Insurance Company failed to comply with Fla. Stat. § 627.4133 26
d. The trial court improperly disregarded the rules of statutory interpretation and binding precedent.............................30
e. The enactment of Section 627.43141 confirmed that Homeowners were entitled to notice of the changed terms in the 2011 Renewal Policy 33

f. Insurance Company failed to provide Homeowners with the notice of change in coverage required under common law 35
g. The admission of counsel for Insurance Company that Fla. Stat. § 627.4133 applied to a change in coverage was binding 37
h. A disputed question of material fact exists as to whether the change in coverage between the Initial Policy and the 2011 Renewal Policy was a material change in coverage 38

II. THE TRIAL COURT COMMITTED ERROR WHEN IT GRANTED SUMMARY JUDGMENT FOR INSURANCE COMPANY 39

a. Standard of Review 39
b. Insurance Company failed to meet its burden as the Movant 40
c. Insurance Company failed to establish Homeowners breached the 2011 Renewal Policy 44

III. THE TRIAL COURT COMMITTED ERROR WHEN IT DENIED HOMEOWNERS' REQUEST FOR LEAVE TO FILE THE THIRD AMENDED COMPLAINT TO ASSERT A CLAIM FOR NEGLIGENT MISREPRESENTATION 46

a. Standard of Review 46
b. Homeowners should have been permitted to sue Insurance Company for negligent misrepresentation 46

Conclusion 49

Certificate of Service 51

Certificate of Compliance with Font Standard 52

TABLE OF AUTHORITIES

Authority **Page No.**

Cases

A.R. Douglass, Inc. v. McRainey,
102 Fla. 1141, 137 So. 157 (Fla. 1931) 30, 36
Acevedo v. First Union Nat. Bank,
357 F.3d 1244 (11th Cir. 2004) 24
Adams v. Bell Partners, Inc.,
138 So. 3d 1054 (Fla. 4th DCA 2014) 43
Adams v. Knabb Turpentine Co.,
435 So.2d 944 (Fla. 1st DCA 1983) 47
Alachua County v. Expedia, Inc.,
175 So.3d 730 (Fla. 2015) 31
Allstate Ins. Co. v. Kaklamanos,
843 So. 2d 885 (Fla. 2003) 25
Anderson v. Liberty Lobby, *Inc.*,
477 U.S. 242 (1986) 39
Auto-Owners Ins. Co. v. DeJohn,
640 So. 2d 158 (Fla. 5th DCA 1994) 25
Bank of N.Y. v. Calloway,
157 So.3d 1064 (Fla. 4th DCA 2015) 41
Bill Williams Air Conditioning & Heating Inc. v. Haymarket Co-op. Bank,
582 So.2d 302 (Fla. 1st DCA 1991) 47
Blumberg v. American Fire & Casualty Co.,
51 So.2d 182 (Fla. 1951) 36
Booker v. Sarasota,
707 So.2d 886 (Fla. 1st DCA 1998) 44
Bryson v. Branch Banking & Trust Co.,
75 So.3d 783 (Fla. 2d DCA 2011) 44
Celotex Corp. v. Catrett,
477 U.S. 317 (1986) 39
City of Lakeland v. Catinella,
129 So. 2d 133 (Fla. 1961) 33, 34
Curr v. Helene Transp. Corp.,
287 So. 2d 695 (Fla. 3d DCA 1973) 38
Daeda v. Blue Cross & Blue Shield of Fla., Inc.,
698 So. 2d 617 (Fla. 2d DCA 1997) 44

Dahl-Eimers v. Mut. of Omaha Life Ins. Co.,
986 F.2d 1379 (11th Cir. 1993) 24
Daniels v. Fla. Dep't of Health,
898 So. 2d 61 (Fla. 2005) 30
Dicus v. Dist. Bd. of Trs. for Valencia,
734 So.2d 563 (Fla. 5th DCA 1999) 37
Drew v. Mobile USA Ins. Co.,
920 So.2d 832 (Fla. 4th DCA 2006) 45
Eastern Airlines v. Planet-Reliance Ins. Co.,
695 So. 2d 732 (Fla. 1st DCA 1996) 33
Essex Ins. Co. v. Zota,
985 So.2d 1036 (Fla. 2008) 35
Flores v. Allstate Ins. Co.,
819 So.2d 740 (Fla. 2002) 38
Freiday v. One West Bank, FSB,
162 So. 3d 86 (Fla. 4th DCA 2014) 44
Gerber Trade Fin., Inc. v. Bayou Dock Seafood Co.,
917 So. 2d 964 (Fla. 3d DCA 2005) 47
Gidwani v. Roberts,
248 So. 3d 203 (Fla. 3d DCA 2018) 44
Green v. JPMorgan Chase Bank, NA,
109 So.3d 1285 44
Gromann v. Avatar Prop. & Cas. Ins. Co.,
345 So. 3d 298 (Fla. 4th DCA 2022) 43
Haiman v. Fed. Ins. Co.,
798 So.2d 811 (Fla. 4th DCA 2001) 38
Hartford Accident and Indemnity Company v. Sheffield,
375 So.2d 598 (Fla. 3rd DCA 1979) 26, 29, 35
Hegel v. First Liberty Ins. Corp.,
778 F.3d 1214 (11th Cir. 2015) 24, 39
Holub v. Holub,
54 So.3d 585 (Fla. 1st DCA 2011) 37
Huertas v. Avatar Prop. & Cas. Ins. Co.,
333 So. 3d 767 (Fla. 4th DCA 2022) 43
Impossible Elec. Techniques, Inc. v. Wackenhut Protective Sys., Inc.,
669 F.2d 1026 (5th Cir. 1982) 40
JN Auto Collection Corp. v. U.S. Sec. Ins. Co.,
59 So.3d 256 (Fla. 3d DCA 2011) (reversing.. 36
Laurencio v. Deutsche Bank National Trust Company,
65 So. 3d 1190 (Fla. 2d DCA 2011) 47

Liberty Mutual Fire Ins. Co. v. Sanderman,
286 So.2d 254 36
Mace v. M&T Bank,
292 So. 3d 1215 (Fla. 2d DCA 2020) 43
Marchesano v. Nationwide Property and Casualty Insurance Company,
506 So.2d 410 (Fla. 1987) 26, 30
Maronda Homes, Inc. v. Lakeview Reserve Homeowners Ass'n,
127 So. 3d 1258 (Fla. 2013) 33
Matsushita Elec. Indus. Co. v. Zenith Radio Corp.,
475 U.S. 574 (1986).. 39
May v. State Farm Mutual Automobile Insurance Company,
430 So.2d 999 (Fla. 4th DCA 1983) 26
Mezadieu v. SafePoint Ins. Co.,
315 So. 3d 26 (Fla. 4th DCA 2021) 37
Pardo v. State,
596 So.2d 665 (Fla. 1992) 32
Pena v. Citizens Property Insurance Co.,
88 So.3d 965 (Fla. 2d DCA 2012) 38
People’s Trust Ins. Co. v. Amaro,
319 So.3d 747 (Fla. 3d DCA 2021) 45
QBE Ins. Corp. v. Chalfonte Condo. Apt. Ass'n,
94 So. 3d 541 (Fla. 2012) 30
Rice-Lamar v. City of Ft. Lauderdale,
232 F.3d 836 (11th Cir. 2000) 39
Rodriguez v. Avatar Property & Casualty Insurance Co.,
290 So. 3d 560 (Fla. 2d DCA 2020) 43
Sacks v. Bank of New York Mellon,
264 So. 3d 938 (Fla. 4th DCA 2018) 41
Savoy v. American Platinum Property & Casualty Insurance,
363 So. 3d 1102 (Fla. 4th DCA 2023) 41, 42
Sawyer v. Transamerica Life Ins. Co., 09-CV-61288, 2010
WL 1372447 at *6 (S.D. Fla. Mar. 31, 2010)..25
Schoeff v. R.J. Reynolds Tobacco Co.,
232 So.3d 294 (Fla. 2017) 30
Seaboard Coastline R.R. Co. v. Nieuwendaal,
253 So.2d 451 (Fla. 2d DCA 1971) 38
Southern Developers & Earthmoving Inc. v. Caterpillar Financial Sales Corporation,
56 So.3d 56 (Fla. 2d DCA 2011) 46

Standard Marine Insurance Co. v. Allyn,
333 So.2d 497 (Fla. 1st DCA 1976) 25
State Farm Mut. Auto. Ins. Co. v. Figler Family Chiropractic, P.A.,
189 So. 3d 970 43
State Farm Mut. Auto. Ins. Co. v. Swearingen,
590 So.2d 506 (Fla. 4th DCA 1991) 25
Strickland v. Norfolk S. Ry. Co.,
692 F.3d 1151 (11th Cir. 2012) 40
Thompson v. Jared Kane Co., Inc.,
872 So.2d 356 (Fla. 2d DCA 2004) 47
Tippens v. Celotex Corp.,
805 F.2d 949 (11th Cir. 1986) 40
U.S. Fire Ins. Co.,
710 So.2d 35
United States Fire Ins. Co. v. Southern Sec. Life Ins. Co.,
710 So.2d 130 (5th DCA 1998) ....Passim
United States Fire Ins. Co. v. Van Iderstyne,
347 So.2d 672 (Fla. 4th DCA 1977) 25
Yisrael v. State,
993 So.2d 952 (Fla. 2008) 41
Young v. Progressive Southeastern Ins. Co.,
753 So.2d 80 (Fla. 2000) 25

Statutes

634, 635, 636, 641, 642, 648, and 651 of the Florida Statutes 24
Fla. Stat. § 90.803(6)... 41
Fla. Stat. § 501.212(4)(a) 16
Fla. Stat. § 627.0651(2) (2002)..16, 17
Fla. Stat. § 627.418(1) (2021)... 24
Fla. Stat. § 627.4133 ....Passim
Fla. Stat. § 627.43141 .... 11, 20, 21, 23, 34

Rules

Fed. R. Civ. P. 56(a)... 39
Fla. R. App. P. 9.030(b)(1)(A) and 9.110(a)(1)....................................... 2, 3
Fla. R. Civ. P. 1.190(a).. 47
Fla. R. Civ. P. 1.510 ....39, 40, 41, 42
Fla.R.App.P. 9.210(a)(2) 51

Other Authorities

SB 408 33

REFERENCES TO PARTIES, THE RECORD ON APPEAL AND APPENDIX TO INITIAL BRIEF

Appellants, Keith Borde and Diane Borde, will be referred to as “Homeowners” or “the Insureds.” Appellee, People’s Trust Insurance Company, will be referred to as “Insurance Company.” All references to the record on appeal are designated by the abbreviation “R” and followed by the page number or range of pages (R. ____), and when appropriate, include a reference to specific line numbers within a transcript (R. ___:___). All references to “App. ____” are to the Appendix[1] to the Initial Brief filed contemporaneously with the Initial Brief.

STATEMENT OF THE CASE

Homeowners sued Insurance Company seeking declaratory judgment as to their rights under an insurance policy, the fourth consecutive policy they purchased from Insurance Company (the third renewal policy), because Insurance Company failed to place them on notice of a change in the terms of their renewal policy. Specifically, Insurance Company did not notify Homeowners that the renewal policy gave it the unilateral option to repair

[1]Homeowners are also filing a motion to supplement the record on appeal with the sole document in the Appendix: [Homeowners’] Motion for Leave to File Third Amended Complaint filed on February 8, 2022.

any damage to their home, or that Insurance Company had the sole discretion select the company or individual(s) to make repairs.

Homeowners sought partial summary judgment in their favor arguing that Insurance Company had an obligation to notify them of this change in the terms of the policy, and because Insurance Company did not it could not enforce the "right to repair" provision in the policy or the accompanying endorsement. Insurance Company sought summary judgment in its favor because it claimed Homeowners breached the policy by not cooperating with Insurance Company's election to repair the property. The trial court denied Homeowners' motions[2] and granted Insurance Company's motion and entered Final Judgment in favor of Insurance Company.

This Court has jurisdiction pursuant to Fla. R. App. P. 9.030(b)(1)(A) and 9.110(a)(1).

STATEMENT OF THE FACTS

1. The OIR approves Form No. PTIC P033 (11/07)

On February 5, 2018, Insurance Company sought approval from the Office of Insurance Regulation for its all-risk residential homeowner's

[2]Homeowner filed two motions. One was based on Fla. Stat. §627.4133 (R. 967-1373) and the second based on Insurance Company's obligations under common law (R. 1374-1781).

insurance policy Form No. PTIC P003 (11/07). (R. 1008-1373, 2124). On March 11, 2008, Form P003 (11/07) was approved by the OIR. *Id.*

Relevant to this appeal, Form P003 (11/07) contained the following condition:

> Our Option. If we give you written notice within 30 days after we receive your signed, sworn proof of loss, we may repair or replace any part of the damaged property with like property. If the property is insured on a replacement cost basis, however, the replacement cost of the property will be paid.

(R. 1022, ¶9) (the "Option to Repair Language").

2. The Initial Policy

Homeowners purchased an insurance policy to insure their home located at 901 NE Tavernier Circle, Palm Bay, Florida 32905 from Insurance Company effective from June 22, 2008, through June 22, 2009 (the "Initial Policy").[3] (R. 641, ¶5; R. 2130-2164).

The Initial Policy was assigned Policy No. PFL006207-0. (R. 2130). It was issued on Form No. PTIC P003 (11/07); however, the Option to Repair Language in the Initial Policy was different than the language approved by the OIR (App. 317). The language in the version of Form No. PTIC P003 (11/07) approved by the OIR reads as follows:

[3]Insurance Company's corporate representative testified that after it was issued, the Initial Policy was never cancelled and was renewed following its expiration through 2012. (R. 2568:22 – 2570:1).

Our Option. If we give you written notice within 30 days after we receive your signed, sworn proof of loss, we may repair or replace any part of the damaged property with like property. If the property is insured on a replacement cost basis, however, the replacement cost of the property will be paid.

(App. 317).

In contrast, the Initial Policy states:

Our Option. If we give you written notice within 30 days after we receive your signed, sworn proof of loss, we may repair or replace any part of the damaged property with like property.

(R. 640-715, ¶5; R. 2130-2164,[4] 2147, ¶9).

The Initial Policy did not contain a Preferred Contractor Endorsement, Form E023 (9/10). *Id.*

3. The Pre-Loss Renewal Policies

a. The 2009 Renewal Policy

Insurance Company renewed the policy for the period of June 22, 2009 through June 22, 2010 (the "2009 Renewal Policy). (R. 986-989, ¶5; R. 993-996; R. 2165-2235). The 2009 Renewal Policy had the same policy number as the Initial Policy and was issued on the same form (PTIC P003 (11/07))

[4]Caitlin Harbur, Director of Underwriting, certified that the copy of the Initial Policy located at R. 2130 – 2164 was a true and correct copy from Insurance Company's files. (R. 2130). However, the declarations page reflects a "Florida Homeowners 3 – Special Form: P003 (11/07)" which is not included with the filing or anywhere else in the Record.

as the Initial Policy. The 2009 Renewal Policy also did not contain a Preferred Contractor Endorsement. (*Id.*; R. 972). Improbably, the Option to Repair Language in the 2009 Renewal Policy (R. 2201) was also different than the language approved by the OIR. (App. 317).

b. The 2010 Renewal Policy

Insurance Company renewed the policy again for a period of June 22, 2010, through June 22, 2011 (the "2010 Renewal Policy"). (R. 973, ¶¶10-11; R. 974; R. 986-989, ¶7; R. 1001-1004; R. 2236 – 2285). The 2010 Renewal Policy had the same policy number as the Initial Policy and was issued on the same form (PTIC P003 (11/07)) as the Initial Policy. *Id.* The 2010 Renewal Policy also did not contain a Preferred Contractor Endorsement. (*Id.*; R. 972). Mysteriously, the Option to Repair Language in the 2010 Renewal Policy was the ***same*** as the language approved by the OIR. (R. 2254; App. 317).

4. The Preferred Contractor Endorsement, Form E023 (9/10)

In September of 2010, Insurance Company applied to the OIR for approval of a Preferred Contractor Endorsement, Form E023 (9/10) (the Preferred Contractor Endorsement"). (R. 640-715, ¶¶10-12; R. 707-708). Insurance Company represented to the OIR:

> The Preferred Contractor endorsement is an optional endorsement that may be selected by applicants or existing

> policyholders. Any policyholder selecting the Preferred Contractor endorsement may later request to have the endorsement removed at the next policy renewal.

(R. 640-715, ¶¶10-12; R. 707-708).

In the event of a covered loss, as opposed to paying an insured the replacement cost value of the damaged property, the Preferred Contractor Endorsement allowed Insurance Company to opt to require an insured to sign a contract with RRT. On information and belief, RRT is owned by or has some affiliation with Insurance Company. *Id.*; R. 3338:8-12).

5. The 2011 Renewal Policy

Insurance Company renewed the policy for the period of June 22, 2011 through June 22, 2012 (the "2011 Renewal Policy"). (R. 973, ¶¶14-15; R. 976; R. 986-989, ¶7; R. 1811 – 1861). The 2011 Renewal Policy had the same policy number as the Initial Policy, the 2009 Renewal Policy and the 2010 Renewal Policy. *Id.* The 2011 Renewal Policy; however, was issued on Form No. PTIC P003 (10/10) (R. 1815) as opposed to Form No. PTIC P003 (11/07). (R. 640-715, ¶8). Also, the 2011 Renewal Policy contained a Preferred Contractor Endorsement. (*Id.* at ¶10; R. 710-711; R. 973, ¶¶14-15; R. 976; R. 986-989, ¶¶7-13; R. 661-706; R. 710-711; R. 1811; R. 1860-1861).

In addition, the Option to Repair Language in the 2011 Renewal Policy was significantly different than the Initial Policy and the pre-loss renewal policies. It provided:

> 9. Our Option. If we give you written notice within 30 days after we receive your signed, sworn proof of loss:
>
> > a. For losses settled on an actual cash value basis, we may repair any part of the damaged property with material or property of like kind and quality;
> >
> > b. For losses covered under Coverage A – Dwelling, insured at Replacement Cost, we may repair the damaged property with material of like kind and quality;
> >
> > c. For all other losses insured on replacement cost basis, the replacement cost will be paid subject to Paragraph 3.b. of Section I – Conditions, whether or not you repair or replace the damaged property.

(R. 1828).

Caitlin Harbur testified for Insurance Company as its corporate representative. (R. 2468 – 3290). Ms. Harbur was the Director of the Underwriting Department for Insurance Company. (R. 2475:1 – 14). When asked whether the Initial Policy and the 2011 Renewal Policy were issued on different forms, she confirmed that the Initial Policy was issued on Form No. PTIC P003 (10/10) and the 2011 Renewal Policy was issued on Form No. PTIC P003 (11/07). (R. 3284:2 – 13). Ms. Harbur also confirmed that Homeowners would have only been on notice of these changes by reviewing the declaration pages to see the difference in the four numbers. (R. 3284:14 – 23). Insurance Company did not provide Homeowners with any additional

riders or notices or memorandums advising of the changes implemented in the 2011 Renewal Policy. (R. 3284:14 – 3285:3).

6. Insurance Company's "vipGold Priority Program"

Sometime in 2011, Insurance Company mailed Homeowners a pre-printed postcard with instructions for Homeowners to send Insurance Company the preprinted postcard back. (R. 640-715, ¶13; R. 709).

006207

SIMPLY SIGN & DROP THIS IN THE MAILBOX TO ENROLL

Yes! *I would like to enroll in the vipGOLD Priority Program at no additional cost today!*

Please send me a replacement card.

name: KEITH BORDE

signature:

The pre-printed postcard was pre-marked with a check mark next to the following statement:

> **"Yes! I would like to enroll in the vipGold Priority Program at no additional cost today!"**

Id. (emphasis added). As to the box that was checked stating "Please send me a replacement card," Insurance Company's corporate representative did not know what the replacement card was or if one was ever sent to the Insureds. (R. 3257:21 – 3258:16).

Homeowners were not provided with any type of notification or communication that by returning the pre-printed postcard back, it would change the terms, conditions and/or coverages of the 2011 Renewal Policy. (R. 986-989, ¶¶8-13; ¶17-19). This included not being notified that if there was a covered loss, Insurance Company could unilaterally decide to repair the damage using RRT instead of paying for the damages or that pursuant to the 2011 Renewal Policy, Insurance Company could require Homeowners to execute the Repair Option Contract.

When Ms. Harbor was questioned about Insurance Company's vipGOLD program, she speculated that Homeowners received documents in February of 2011. (R. 2547:3 – 7). When pressed, Ms. Harbur conceded that she was not sure what was sent to Homeowners along with the postcard and further confirmed that there was no note in her system that would establish what "marketing materials" were sent, if anything. (R. 2547:12 – 2549:1; R. 2550:18-2551:6). She did not know if Insurance Company had copies of any of these purported "marketing materials." *Id.* As to the

postcard, Ms. Harbur also admitted that she did not know for certain if Insurance Company maintained a log or details regarding what was sent to Homeowners. (R. 2549:13-17). Ms. Harbur further testified that even though there was supposed to be "marketing materials" sent with the postcard, nothing in Insurance Company's records reflect that Homeowners were sent those, or even that Homeowners were sent the postcard. (R. 2551:16 – 2552:2; R. 3251:22 – 3253:22).

After receiving the postcard back in the mail, Ms. Harbur did not know if there were any conversations with Homeowners regarding the Preferred Contractor Endorsement being added to the 2011 Renewal Policy, and if there had been conversations those would have been logged into Insurance Company's records. (R. 2562:3 – 2566:6).

In connection with the amendment to the "Option to Repair" language and the addition of the Preferred Contractor Endorsement, Ms. Harbur could only verify that Homeowners received the policy and any endorsement(s) listed on the declaration page. (R. 3254:19 – 3255:11). When asked to examine the 2011 Renewal Policy in more detail, Ms. Harbur confirmed that for Homeowners to be informed of these changes they would have to look at page 43 to see the Preferred Contractor Endorsement, and that it was not

until page “3 or 4” where Homeowners would see that such a document was included. (R. 3255:15 – 3256:210.

7. Fla. Stat. § 627.4133

Prior to May 17, 2011,[5] when the terms of an insurance policy were materially changed, Florida law required an insurance carrier to non-renew the policy and issue a new policy. At the relevant time frame for this appeal, the requirement to non-renew a policy was:

> An insurer issuing a policy providing coverage for workers’ compensation and employer’s liability insurance, property, casualty, except mortgage guaranty, surety, or marine insurance, other than motor vehicle insurance subject to s. 627.728 shall give the first named insured at least 45 days’ advance written notice of the nonrenewal or of the renewal premium. If the policy is not to be renewed, the written notice shall state the reason or reasons as to why the policy is not to be renewed. This requirement applies only if the insured has furnished all of the necessary information so as to enable the insurer to develop the renewal premium prior to the expiration date of the policy to be renewed.
>
> ***
>
> If an insurer fails to provide the 45-day or 20-day written notice required under this section, the coverage provided to the named insured shall remain in effect until 45 days after the notice is given or until the effective date of replacement coverage obtained by the named insured, whichever occurs first.

See Fla. Stat. § 627.4133(1)(a),(1)(c) (2011).

Further, specific to property insurance policies the requirements are:

[5] That is when Fla. Stat. § 627.43141 became effective.

> With respect to any personal lines or commercial residential property insurance policy, including, but not limited to, any homeowner's, mobile home owner's, farmowner's, condominium association, condominium unit owner's, apartment building, or other policy covering a residential structure or its contents:
>
> The insurer shall give the named insured at least 45 days' advance written notice of the renewal premium.
>
> The insurer shall give the named insured written notice of nonrenewal, cancellation, or termination at least 100 days prior to the effective date of the nonrenewal, cancelation, or termination that would be effective between June 1 and November 30.

See Fla. Stat. §627.4133(2)(a)(b) (2011).

Last, if the statutory notice(s) are not provided, "the coverage provided to the named insured shall remain in effect until 45 days after the notice is given or until the effective date of the replacement coverage obtained by the named insured, whichever occurs first. *See* Fla. Stat. §627.4133(1)(c).

At no point did Insurance Company send Homeowners a notice contemplated by Fla. Stat. §627.4133. (R. 982, ¶36; R. 986-989, ¶¶8-13, ¶¶17-19). It concedes this fact. (R. 3284:14 – 3285:3).

8. A storm damaged the Insureds' home

In June of 2012, the roof of the Insureds' home was damaged by wind during a storm, through which rainwater leaked into the home and damaged its interior. (R. 640-715, ¶22; R. 978, ¶19; R. 986-989, ¶14). Homeowners

reported the loss to Insurance Company. (R. 640-715, ¶23; R. 986-989, ¶15). In August of 2012, Insurance Company determined that the interior damage to the Insureds' home was covered under the policy. (R. 640-715, ¶24; R. 712-714; R. 986-989, ¶16; R. 1005-1007). It denied coverage for the damage to the roof, claiming it was excluded under the 2011 Renewal Policy. *Id.*

However, Insurance Company did not calculate the replacement cost value for Homeowners to repair the damage to their home. (R. 640-715, ¶25; R. 715; R. 986-989, ¶16; R. 1005-1007). Instead, it informed Homeowners that it was exercising its right to repair pursuant to the Preferred Contractor Endorsement and instructed Homeowners to sign the Repair Option Contract. *Id.* The Repair Option Contract authorized RRT, Insurance Company's "preferred contractor" to make repairs. (R. 640-715, ¶25; R. 986-989, ¶20; R. 1005-1007).

9. Homeowners sue Insurance Company

Homeowners filed the underlying lawsuit on February 6, 2013. (R. 10-35).

a. The Second Amended Complaint

The operative pleading in the underlying litigation was the Second Amended Complaint, which was filed on January 24, 2020. (R. 640-715). Count I of the Second Amended Complaint sought declaratory judgment as

to whether Insurance Company violated Fla. Stat. §627.4133 as to Form PTIC P003 and the Preferred Contractor Endorsement, and if so, what rights Homeowners had under the 2011 Renewal Policy in connection with the June, 2012 loss. (R. 640-715). Count II sought declaratory judgment as to Homeowners' rights under the Preferred Contractor's Endorsement, specifically whether Insurance Company could require Homeowners to sign the "Authorization to Perform Services and Direction of Payment" (the "Repair Option Contract"). *Id.* Count III was for fraud based on materials misrepresentations made by Insurance Company to Homeowners. *Id.* Count IV was for Insurance Company's breach of the 2011 Renewal Policy. *Id.*

b. Insurance Company's motion to dismiss

Insurance Company sought dismissal of Count III of the Second Amended Complaint for failure to state a cause of action. (R. 716-721). It was granted. (R. 901-902).

c. Insurance Company's answer and affirmative defenses

In its answer, Insurance Company admitted the following:

- It added the Preferred Contractor Endorsement to its policies.
- The Second Amended Complaint accurately describes the representations Insurance Company made to the OIR in connection with the Preferred Contractor Endorsement.
- The OIR approved the Preferred Contractor Endorsement.

- That Insurance Company sent the postcard attached as Exhibit "C" to the Second Amended Complaint.

- That there was coverage for the ensuing loss to Homeowners' property and that Insurance Company claimed to invoke its option to repair under the Preferred Contractor Endorsement.

- That the Preferred Contractor Endorsement allowed Insurance Company to select the contractor to do the repairs.

(R. 722-739, ¶¶10, 11, 12, 13, 20, 23, 47).

Insurance Company asserted the following defenses:

- Homeowners failed to give it prompt notice of the loss and also that they failed to "otherwise comply with their duties after the loss."

- Homeowners failed to make reasonable repairs to protect the property from further damage.

- Homeowners failed to furnish Insurance Company with the records related to the claim.

- That the damage to the Insureds' home did not occur during the time the 2011 Renewal Policy was in effect.

- That the damage to the Insureds' home was excluded under the 2011 Renewal Policy.

- That Homeowners had unclean hands.

- That Homeowners intentionally concealed or misrepresented material facts or circumstances as to the onset and duration of leakage, seepage and drain blockage problems leading up to the reporting of the loss to Insurance Company.

- The insurance benefits Homeowners are entitled to are controlled by the Preferred Contractor Endorsement and the H03LS Endorsement.

- Homeowners breached the 2011 Renewal Policy by prematurely suing Insurance Company.

- Homeowners frustrated Insurance Company's performance of its obligations under the Policy.

- Homeowners hindered Insurance Company's performance of its obligations under the Policy.

- Homeowners failed to mitigate their damages.

- Insurance Company was entitled to a set-off of the $500 deductible.

- Insurance was entitled a set-off of any monies paid to Homeowners' mortgagee or third party.

- Homeowners breached the 2011 Renewal Policy by failing to comply with Insurance Company's option to repair.

- The Preferred Contractor Endorsement was approved by the OIR.

- Homeowners' claim that the Preferred Contractor Endorsement cannot be void or not applicable because of Fla. Stat. § 501.212(4)(a).

- Homeowners are not entitled to declaratory relief because they did not exhaust their administrative remedies as required by Fla. Stat. § 627.0651(2) (2002).

(R. 722-739).

d. Homeowners' reply and avoidance of Insurance Company's affirmative defenses

In response, Homeowners pled that Insurance Company had waived its right to insist on compliance with the policy conditions based on its concession that their home was damaged, Insurance Company's breach of the 2011 Renewal Policy, and denial of some coverage. (R. 740-741).

Alternatively, Homeowners pled that they complied with all the policy conditions, or they were waived by Insurance Company's actions. *Id.* Last, that Insurance Company cannot raise policy conditions, exclusions and coverage imitations and defenses based on Insurance Company's breach of the 2011 Renewal Policy and violation of Florida law. *Id.*

e. Homeowners request leave to file a Third Amended Complaint

In February of 2022, Homeowners sought leave to amend their complaint to add a count for negligent misrepresentation. (App. 4 – 500). Through litigation and discovery, Homeowners had discovered additional facts and issues that gave rise to cause of action for negligent misrepresentation. (App. 4). The proposed Third Amended Complaint was attached to the motion as an exhibit. (App. 6 – 500).

f. The parties' competing motions for summary judgment

i. Homeowners' motions

Homeowners sought partial summary judgment in their favor alleging that Insurance Company was in breach of the 2011 Renewal Policy because it failed to provide the notice required by Fla. Stat. §627.4133 (R. 961 – 1373) and, alternatively, because Insurance Company failed to provide them with the notice required under Florida common law (R. 1374-1781). Homeowners designated the following record evidence in support of their position:

Exhibit A: Affidavit of Keith Borde[6]

Exhibit 1: Declarations Page of Initial Policy[7]
Exhibit 2: Declarations Page of 2009 Renewal Policy[8]
Exhibit 3: Declarations Page of 2010 Renewal Policy[9]
Exhibit 4: Declarations Page of 2011 Renewal Policy[10]
Exhibit 5: Correspondence from Insurance Company to Homeowners dated August 14, 2012[11]

Exhibit B: Version of Form PTIC P003 (11/07) filed with OIR[12]

Exhibit C: Transcript from the deposition of Insurance Company's corporate representative (Underwriting Department)[13]

Exhibit D: Full copy of 2011 Renewal Policy[14]

ii. Insurance Company's motion

Insurance Company's position was that it was entitled to summary judgment because (1) there was no material change in coverage between the Initial Policy and the 2011 Renewal Policy and (2) it provided Homeowners with any required notice and (3) Homeowners "materially breached the [2011 Renewal Policy]." (R. 2404-2626). In support of its motion, it attached the following unauthenticated documents:

---

[6](R. 986 – 989; R. 1394 – 1397).
[7](R. 990 – 992; R. 1398 – 1400).
[8](R. 993 – 996; R. 1401 – 1404).
[9](R. 997 – 1000; R. 1001 – 1408).
[10](R. 1001 – 1004; R. 1409 – 1412).
[11](R. 1005 – 1007; R. 1413 – 1415).
[12](R. 1008 – 1256; R. 1416 – 1664).
[13](R. 1257 – 1326; R. 1665 – 1734).
[14](R. 1327 – 1373; R. 1735 – 1781).

Exhibit 1:	2011 Renewal Policy (R. 2419 – 2466)
Exhibit 2:	Transcript from the deposition of Insurance Company's corporate representative (Underwriting Department) (R. 2467 – 2619)
Composite Exhibit 3:	"Marketing materials" that Insurance Company purported were provided to Homeowners and the postcard signed and returned by Homeowners (R. 2620 – 2621)
Exhibit 4:	Order from unrelated circuit court case (R. 2622 – 2623)
Exhibit 5:	Order from unrelated circuit court case (R. 2624 – 2626).

iii. The parties' responses

Homeowners filed a response in opposition to Insurance Company's motion (R. 2636 – 2731) and Insurance Company also filed a responses to Homeowners' motions (R. 2732 – 2942).

iv. The March 10, 2022 hearing

The trial court held a hearing on the parties' competing motions. (R. 2982 – 3031). As to Homeowners' argument that Insurance Company had an obligation under common law to notify them of a material change in coverage, the trial court interpreted the authority presented to require there to be a material change in coverage, which would be the equivalent of Homeowners being subject to "risk without protection" but determined that Homeowners were "protected as if they were protected in the previous

policies." (R. 3001:12 – 3002:5). The trial court inquired into why the "marketing materials" would not suffice as notice; however, Homeowners made it clear that the "brochure" could not be included (not to mention that Insurance Company's own corporate representative could not confirm that the information was ever sent to Homeowners). (R. 2997:4 – 3000:20).

The trial court noted that Homeowners were:

> [N]ot denied coverage in this case. [They] had all the protections in the world. I suppose if [they are] claiming it's a material change because he couldn't go to Vegas and blow his money – being allowed to get a windfall and now not being able to is not what U.S. Fire is talking about. It's talking about protecting an insured that had a protection that was taken away without telling [them].

(R. 3011:4 – 3012:12).

Homeowners pushed the trial court to strictly construe the statute (R. 3020:16 – 3021:25); however, the trial court held that there was no material change between the Initial Policy and the 2011 Renewal Policy and that the 2011 Renewal Policy was a renewal (R. 3024:2 – 3025:25). It also granted Insurance Company's motion for summary judgment, finding Homeowners in breach of the 2011 Renewal Policy for failing to permit Insurance Company to utilize its right to repair. *Id.*

g. Homeowners' motions for reconsideration

Homeowners moved for reconsideration of the summary judgment ruling. (R. 2947 – 3152). They advocated the trial court to utilize Fla. Stat. §

627.43141 (effective May 11, 2011) as to what type of notice was contemplated to policyholders. *Id.* It also advocated that the trial court's focus on a purported "windfall" to the Insureds was irrelevant to the proper interpretation of the statute and/or the common law and what is required from Insurance Company when a change is made to coverage. Last, it asked the trial court to take judicial notice of a separate case where, under similar facts, Insurance Company conceded it did not comply with Fla. Stat. § 627.4133. *Id.*

Homeowners also asked the trial court to vacate the summary judgment because of Insurance Company coincidentally and conveniently locating the "marketing materials" in time to oppose their summary judgment motion, in conflict with the testimony of Insurance Company's corporate representative and also Insurance Company's prior discovery requests. (R. 3167 – 3613).

h. Homeowners are denied leave to file their Third Amended Complaint, Final Judgment is entered against them, and they file this appeal

The trial court also denied Homeowners' 2022 motion for leave to amend their complaint to assert a claim for negligent misrepresentation. (R. 3636 – 3637). In its order, the trial court find that there would be "prejudice to [Insurance Company] if [Homeowners were] allowed to amend and neither

the facts nor the history of this case warrant [Homeowners] being given leave to amend the Complaint." *Id.* at ¶3.

The trial court entered a Final Judgment (R. 3638 – 3639) and then an Amended Final Judgment (R. 3640 – 3641). Homeowners timely filed this appeal as to both versions of the final judgment (collectively the "Final Judgment"). (R. 3644 – 3649).

SUMMARY OF THE ARGUMENT

Reversal of the Final Judgment is required.

First, the trial court erred as a matter of law when it denied Homeowners' motions for summary judgment and found, as a matter of law, that Insurance Company was not required to provide Homeowners with notice of the change in terms between the Initial Policy and the 2011 Renewal Policy. In doing so, the trial court incorrectly interpreted the requirements of Fla. Stat. § 627.4133 and common law.

The addition of the Preferred Contractor Endorsement and the revision to the "Option to Repair" language constituted material changes to the terms of the 2011 Renewal Policy or at least presented a question of fact as to whether the change was material. Alternatively, to the extent there was any ambiguity as to what triggered Insurance Company's obligation to provide notice to Homeowners, the trial court should have looked to the newly

enacted Fla. Stat. § 627.43141 (effective May 11, 2011) and the legislative history and used that as guidance.

Further, it was error to grant summary judgment in favor of Insurance Company on the ground that Homeowners breached the 2011 Renewal Policy. Insurance Company failed to meet its burden as the movant, relied on unauthenticated evidence, and otherwise failed to establish any of the purported "undisputed" facts that formed the basis of its claim that Homeowners were in breach of any obligation in the 2011 Renewal Policy.

Last, the trial court should have permitted Homeowner to amend their complaint. The facts uncovered during discovery were not readily available to Homeowners when they initially filed the underlying lawsuit, and the proposed Third Amended Complaint stated a cause of action for negligent misrepresentation which, if Homeowners had proven, could have impacted their remedies against Insurance Company.

ARGUMENT

I. THE TRIAL COURT COMMITTED ERROR WHEN IT DENIED HOMEOWNERS' MOTIONS FOR SUMMARY JUDGMENT

a. Standard of Review

A motion for summary judgment is properly granted when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to

any material fact and that the moving party is entitled to a judgment as a matter of law." *See Acevedo v. First Union Nat. Bank*, 357 F.3d 1244, 1246-47 (11th Cir. 2004). Further, "[u]nder Florida law, interpretation of an insurance contract, including determination and resolution of ambiguity, is a matter of law," subject to de novo review. *See Dahl-Eimers v. Mut. of Omaha Life Ins. Co*., 986 F.2d 1379, 1381 (11th Cir. 1993). "Questions of statutory interpretation are likewise reviewed de novo." *See Hegel v. First Liberty Ins. Corp.,* 778 F.3d 1214, 1219 (11th Cir. 2015).

b. Application of the Florida Insurance Code to this appeal

The "Florida Insurance Code" is comprised of Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651 of the Florida Statutes. This necessarily includes Section 627 in which we find the statute at issue before this Court. The Florida Insurance Code mandates as follows:

> Any insurance policy, rider, or endorsement otherwise valid which contains any condition or provision not in compliance with the requirements of [Florida Insurance Code] shall not be thereby rendered invalid … but shall be construed and applied in accordance with such conditions and provisions as would have applied had such policy, rider, or endorsement been in full compliance with this code.

See Fla. Stat. § 627.418(1) (2021).

This section of the Code "codifies the principle that insurance policies that are inconsistent with the Insurance Code must be harmonized with the

Code." *See Sawyer v. Transamerica Life Ins. Co*., 09-CV-61288, 2010 WL 1372447 at *6 (S.D. Fla. Mar. 31, 2010). Taking this analysis one step further, courts throughout the state of Florida, including the Supreme Court of Florida, have held that, "[w]hen an insurance policy does not conform to the requirements of statutory law, a court must write a provision into the policy to comply with the law, or construe the policy as providing the coverage required by law." *See Auto-Owners Ins. Co. v. DeJohn*, 640 So. 2d 158, 161 (Fla. 5th DCA 1994) (citing *United States Fire Ins. Co. v. Van Iderstyne*, 347 So.2d 672 (Fla. 4th DCA 1977); *see also, Allstate Ins. Co. v. Kaklamanos*, 843 So. 2d 885, 896 (Fla. 2003); *Standard Marine Insurance Co. v. Allyn*, 333 So.2d 497 (Fla. 1st DCA 1976); *State Farm Mut. Auto. Ins. Co. v. Swearingen*, 590 So.2d 506, 507 (Fla. 4th DCA 1991) (finding that the policy's three-year limitation on med pay coverage was invalid because in conflict with the statute); *Young v. Progressive Southeastern Ins. Co*., 753 So.2d 80, 83 (Fla. 2000) (holding that provisions in uninsured motorist policies which provide less coverage than required by the statute are void as contrary to public policy).

For this reason, the notice contemplated by Fla. Stat. § 627.4133 must be viewed as if it was a term required by the Initial Policy (and all subsequent renewal policies).

c. Insurance Company failed to comply with Fla. Stat. § 627.4133

Under Florida Law, the widely accepted definition of a "renewal" insurance policy is one which is based upon and subject to the same terms and conditions as were in the prior policy. *See Hartford Accident and Indemnity Company v. Sheffield*, 375 So.2d 598 (Fla. 3rd DCA 1979). The general rule in Florida is that upon each renewal of an insurance policy, an entirely new and independent contract is created. *See May v. State Farm Mutual Automobile Insurance Company*, 430 So.2d 999 (Fla. 4th DCA 1983); *see also, Marchesano v. Nationwide Property and Casualty Insurance Company*, 506 So.2d 410 (Fla. 1987). However, the insured is entitled to assume, absent notice to the contrary, that the terms of the renewal policy are the same as those of the original contract. *See May*, 430 So.2d at 1001. Conversely, a "non-renewal" is a policy with material changes in the terms and conditions from the prior policy. *See United States Fire Ins. Co. v. Southern Sec. Life Ins. Co.*, 710 So.2d 130 (5th DCA 1998).

Because of the "material changes in the terms and conditions" between the Initial Policy and the 2011 Renewal Policy, the Florida Insurance Code required Insurance Company to non-renew the policy and issue a new policy. At the relevant time frame for this appeal, the requirement to non-renew a policy was:

> An insurer issuing a policy providing coverage for workers' compensation and employer's liability insurance, property, casualty, except mortgage guaranty, surety, or marine insurance, other than motor vehicle insurance subject to s. 627.728 shall give the first named insured at least 45 days' advance written notice of the nonrenewal or of the renewal premium. If the policy is not to be renewed, the written notice shall state the reason or reasons as to why the policy is not to be renewed. This requirement applies only if the insured has furnished all of the necessary information so as to enable the insurer to develop the renewal premium prior to the expiration date of the policy to be renewed.
>
> ***
>
> If an insurer fails to provide the 45-day or 20-day written notice required under this section, the coverage provided to the named insured shall remain in effect until 45 days after the notice is given or until the effective date of replacement coverage obtained by the named insured, whichever occurs first.

See Fla. Stat. §627.4133(1)(a),(1)(c) (2011).

Further, specific to property insurance policies the requirements are:

> With respect to any personal lines or commercial residential property insurance policy, including, but not limited to, any homeowner's, mobile home owner's, farmowner's, condominium association, condominium unit owner's, apartment building, or other policy covering a residential structure or its contents:
>
> The insurer shall give the named insured at least 45 days' advance written notice of the renewal premium.
>
> The insurer shall give the named insured written notice of nonrenewal, cancellation, or termination at least 100 days prior to the effective date of the nonrenewal, cancelation, or termination that would be effective between June 1 and November 30.

See Fla. Stat. §627.4133(2)(a)(b) (2011).

At no point did Insurance Company send Homeowners a notice contemplated by Fla. Stat. §627.4133. (R. 982, ¶36; R. 986-989, ¶¶8-13, ¶¶17-19). It concedes this fact. (R. 3284:14 – 3285:3). Because the statutory notice(s) were not provided, "the coverage provided to the named insured shall remain in effect until 45 days after the notice is given or until the effective date of the replacement coverage obtained by the named insured, whichever occurs first. *See* Fla. Stat. §627.4133(1)(c).

In *United States Fire Ins. Co.*, *supra*, the Court examined the obligations of an insurer in a renewal/non-renewal setting. In so doing, the court interpreted Fla. Stat. § 627.4133 which sets forth the notice of non-renewal requirements for liability insurers. In *United States Fire Ins. Co.*, the insurer (Hartford) was the primary liability insurer for the insured (Southern Security) from August 1, 1982 until August 1, 1991. *See United States Fire Ins. Co.*, 710 So.2d at 130. The policies renewed from August 1, 1982 to August 1, 1987 provided personal injury liability coverage to its insured. *Id*. However, the 1987 policy and later renewed policies excluded personal injury coverage by means of an endorsement to the policies. *Id*.

The insured was sued by a former employee for libel and slander for statements made in 1990-1991. *Id*. Libel and slander are classified as

personal injury under the subject policies. *Id*. The insured sought coverage under the policy and the insurer declined coverage based upon the post 1987 endorsements which removed personal injury coverage from the policy. *Id*. Subsequently, the insured sued the insurer alleging that the endorsement excluding personal injury coverage constituted a material change which triggered the non-renewal notification requirements pursuant to Fla. Stat. § 627.4133. The insurer contended that Fla. Stat. § 627.4133 was only triggered when the entire policy was not renewed. *Id*.

In rejecting the insurer's contention and agreeing with the insured, the Court made the following observation:

> The purpose of the statute's notice requirement is to enable an insured to obtain coverage elsewhere before the insured is subjected to risk without protection. The 1987 Hartford policy, which deleted this coverage, was a non-renewal of the 1986 Hartford policy within the meaning § of 627.4133. Thus Hartford was required to give Southern Security written notice of nonrenewal by the statute ....
>
> We agree with trial court that the 1987 policy was a "nonrenewal" of the 1986 policy which triggered the notice requirement of section 627.4133. A "nonrenewal" is a policy with material changes in terms and conditions from the prior policy. *See Hartford Accident and Indemnity Company v. Sheffield*, 375 So.2d 598 (Fla. 3d DCA 1979) (noting "the widely accepted definition of a "renewal" insurance policy as one which is based upon and subject to the same terms and conditions as were contained in the original policy'") ....
>
> Moreover, even though the 1987 and later policies which Hartford sent to Southern contained an endorsement which

> excluded personal injury coverage, this purported “notice” within the policy itself is insufficient to inform an insured of, as evidenced by this case, significant policy changes. *See Marchesano*, 506 So.2d at 413 (“Absent a notice to the contrary, the insured is entitled to assume that the terms of the renewed policy are the same as those of the original contract.”) We reject Hartford's argument that the legislature intended only to require notice of cancellation of an entire policy of insurance as opposed to a change in coverage. The statute requires notice of non-renewal, and the 1987 and later policies were clearly not renewals of the pre-1987 policy form which included personal injury coverage.

See United States Fire Insurance Company, 710 So.2d at 131-132.

For this reason, the new Option to Repair language and the Preferred Contractor Endorsement are unenforceable as a matter of law, and this Court should reverse the Final Judgment and remand for further proceedings consistent with that determination.

d. The trial court improperly disregarded the rules of statutory interpretation and binding precedent

“When the statute is clear and unambiguous,” we use the plain language of the statute and **avoid rules of statutory construction** to determine the Legislature’s intent. *See Schoeff v. R.J. Reynolds Tobacco Co.*, 232 So.3d 294, 301 (Fla. 2017) (emphasis added); *citing Daniels v. Fla. Dep't of Health*, 898 So. 2d 61, 64 (Fla. 2005); *see also QBE Ins. Corp. v. Chalfonte Condo. Apt. Ass'n*, 94 So. 3d 541 (Fla. 2012); *A.R. Douglass, Inc. v. McRainey*, 102 Fla. 1141, 137 So. 157, 159 (Fla. 1931).

Homeowners provided the trial court with case law interpreting Fla. Stat. § 627.4133 holding that "[a] 'nonrenewal' is a policy with material changes in terms and conditions from the prior policy." *See United States Fire Ins. Co.*, 710 So.2d at 131-132. The trial court disregarded this binding case law and instead concluded that *United States Fire Ins. Co.* did not require Insurance Company to provide Homeowners with notice because they "had the same benefits and coverage that [they] had in prior policies" and that "[t]he only change to the policy by the addition of the endorsement is the method of payment" and that "[t]he addition of the endorsement did not subject [Homeowners] to a risk without protection." (R. 2943, ¶1).

This was error, and mandates reversal. The case of *Alachua County v. Expedia, Inc.*, 175 So.3d 730 (Fla. 2015), established the relevant precedent as follows:

> ***We are bound by the constraints of existing jurisprudence*** to interpret Florida's TDT in accordance with the legislative intent found in the statute's plain language. See *Gargett*, 101 So.3d at 356; *Bennett*, 71 So.3d at 837.

Id. at 736.

In reaching its conclusion, the trial court improperly disregarded binding [15] case law that required Insurance Company to provide Homeowners with notice when there were "material changes in terms and conditions from the prior policy." In doing so, the trial court erroneously interpreted Insurance Company's obligation under Florida law. For this reason, the new Option to Repair language and the Preferred Contractor Endorsement are unenforceable as a matter of law, and this Court should reverse the Final Judgment and remand for further proceedings consistent with that determination.

---

[15]Under the *Pardo* doctrine, *United States Fire Ins. Co.* was binding on the trial court. *See Pardo v. State,* 596 So.2d 665 (Fla. 1992). *Pardo* quotes *State v. Hayes* to explain this principle:

> The District Courts of Appeal are required to follow Supreme Court decisions. As an adjunct to this rule it is logical and necessary in order to preserve stability and predictability in the law that, likewise, trial courts be required to follow the holdings of higher courts—District Courts of Appeal. The proper hierarchy of decisional holdings would demand that in the event the only case on point on a district level is from a district other than the one in which the trial court is located, the trial court be required to follow that decision. Alternatively, if the district court of the district in which the trial court is located has decided the issue, the trial court is bound to follow it. Contrarily, as between District Courts of Appeal, a sister district's opinion is merely persuasive.

Hayes, 333 So.2d 51, 53 (Fla. 4th DCA 1976).

e. The enactment of Section 627.43141 confirmed that Homeowners were entitled to notice of the changed terms in the 2011 Renewal Policy

"Remedial statutes operate to further a remedy or confirm rights that already exist[.]" *See Maronda Homes, Inc. v. Lakeview Reserve Homeowners Ass'n*, 127 So. 3d 1258, 1272 (Fla. 2013). "'Remedial statutes or statutes relating to remedies... which do not create or take away vested rights, but only operate in furtherance of the remedy or confirmation of rights already existing, do not come within the legal conception of a retrospective law, or the general rule against retrospective operation of statutes."' *See Eastern Airlines v. Planet-Reliance Ins. Co*., 695 So. 2d 732, 734 (Fla. 1st DCA 1996) (quoting *City of Lakeland v. Catinella*, 129 So. 2d 133, 136 (Fla. 1961)).

Before section 627.43141(2) was enacted, when an insurer "change[d] a term or terms of a policy, the change constitute[d] a nonrenewal of the entire policy" and required "notice of the policy's nonrenewal to the policyholder in accordance with" section 627.4133, Florida Statutes. Fla. S. Comm. on Banking & Ins., CS for SB 408 (2011) Staff Analysis 5 (Apr. 1, 2011), available at: http://www.flsenate.gov/Session/Bill/2011/408/Analyses/2011s0408.pre.rc.PDF.

But the "process of nonrenewing an entire insurance policy due to a change in a policy term, and subsequently offering coverage to the policyholder," was "caus[ing] confusion to policyholders." Id. The Legislature enacted section 627.43141 to "(a) [a]llow an insurer to make a change in policy terms without nonrenewing those policyholders that the insurer wishes to continue insuring;" "(b) [a]lleviate concern and confusion to the policyholder caused by the required policy nonrenewal for the limited issue if an insurer intends to renew the insurance policy, but the new policy contains a change in policy terms;" and "(c) [e]ncourage policyholders to discuss their coverages with their insurance agents." *See* Fla. Stat. § 627.43141(7)(a)-(c), Fla. Stat. (2016).

The notice must "be entitled 'Notice of Change in Policy Terms'" and the "insurer must also provide a sample copy of the notice to the named insured's insurance agent before or at the same time that notice is provided to the named insured." *See* Fla. Stat. § 627.43141(2) (2016). If an insurer "fails to provide the notice... the original policy terms remain in effect[.]" Fla. Stat. § 627.43141(6) (2016).

For this reason, the new Option to Repair language and the Preferred Contractor Endorsement are unenforceable as a matter of law, and this Court

should reverse the Final Judgment and remand for further proceedings consistent with that determination.

f. Insurance Company failed to provide Homeowners with the notice of change in coverage required under common law

"Absent a notice to the contrary, the insured is entitled to assume that the terms of the renewed policy are the same as those of the original contract." *See U.S. Fire Ins. Co.*, 710 So.2d at 133. For a policy to be "renewed," it must be "based upon and subject to the same terms and conditions as were contained in the original policy." *See Hartford Accident & Indemn. Co. v. Sheffield*, 375 So.2d 598 (Fla. 3d DCA 1979). The existence Fla. Stat. § 627.4133 is indicative of the fact that this notice requirement is part of Florida's common law. It is a "well-settled rule of Florida statutory construction that [s]tatutes in derogation of the common law are to be construed strictly… they will not be interpreted to displace the common law further than is clearly necessary." *See Essex Ins. Co. v. Zota*, 985 So.2d 1036, 1048 (Fla. 2008). Insurance Company was required to notify Homeowners of any changes to the Initial Policy. *See, e.g., U.S. States Fire Ins.*, 710 So.2d at 133 (holding that the actual exclusionary language and/or endorsement itself is not sufficient to constitute notice).

In *Liberty Mutual Fire Ins. Co. v. Sanderman*, 286 So.2d 254 (Fla. 3d DCA 1973, the insureds were not notified that the coverage they purchased for their Florida home was less coverage than they had for their New Jersey home. The insureds were unaware of the difference in coverage until they sustained a theft loss. The insurer in *Sanderman* argued that the policy was sufficient notice of the coverage limits, and that the policy contained a limitation that applied to the loss. In reversing the trial court's ruling, the Third District held that "[t]he insureds' failure to read their policy in this case does not preclude them from claiming a conflict between the policy and the coverage desired." *Id.* Citing to *Blumberg v. American Fire & Casualty Co.*, 51 So.2d 182 (Fla. 1951), the Third District explained that "[i]nsurance policies are prepared by the insurance company and, as in this case, the insured may never read them unless some controversy arises as to their coverage" and also that the "law does not require [the insured] to do so." *Id.* at 184; *see also, JN Auto Collection Corp. v. U.S. Sec. Ins. Co.*, 59 So.3d 256 (Fla. 3d DCA 2011) (reversing a directed verdict where an endorsement for additional exclusions was added without notice to the insured).

For this reason, the new Option to Repair language and the Preferred Contractor Endorsement are unenforceable as a matter of law, and this Court

should reverse the Final Judgment and remand for further proceedings consistent with that determination.

g. The admission of counsel for Insurance Company that Fla. Stat. §627.4133 applies to a change in coverage was binding

The Record contains an admission from counsel for Insurance Company, albeit in a different court proceeding, that Insurance Company was required to provide notice to an insured not just of the renewal premiums but notice of a change in terms. (R. 2301:23 – 2302:6). The exchange went as follows:

> THE COURT: Yeah. Okay. So is [counsel for the insured] correct that under 627.433 [sic] – and again, I'm just asking in general here, that if an insurance company is making a – I guess it has to be some kind of a significant change to a – the renewal of a policy, they have to give the policyholder 45 days' notice?
>
> COUNSEL FOR INSURANCE COMPANY: They have to provide notice, Your Honor. Correct.

Id.

That admission is binding on Insurance Company in this proceeding. *See Mezadieu v. SafePoint Ins. Co.*, 315 So. 3d 26, 30 (Fla. 4th DCA 2021) (Warner, J. concurring specially) ("A party is [ ] bound by factual concessions made by that party's attorney before a judge in a legal proceeding.") (quoting *Dicus v. Dist. Bd. of Trs. for Valencia*, 734 So.2d 563, 564 (Fla. 5th DCA 1999) (footnote omitted)); *Holub v. Holub*, 54 So.3d 585,

587 (Fla. 1st DCA 2011) (same); *Curr v. Helene Transp. Corp.*, 287 So. 2d 695, 697 (Fla. 3d DCA 1973) ("The admission by defense counsel in court at the time of trial as to the liability of all the defendants and entered on the court record was a valid stipulation which was binding upon all parties and the trial court.").

"An admission against interest may be introduced into evidence as substantive evidence of the truth of the matter stated. This is so even though the person making the admission against interest subsequently denies making such admission" (not the scenario here). *See Seaboard Coastline R.R. Co. v. Nieuwendaal*, 253 So.2d 451, 452 (Fla. 2d DCA 1971).

h. A disputed question of material fact exists as to whether the change in coverage between the Initial Policy and the 2011 Renewal Policy was a material change in coverage

Alternatively, as observed by the trial court, a jury should decide whether the change in terms and coverage between the Initial Policy and the 2011 Renewal Policy. (R. 3001:14-15) ("generally, speaking, what is material or not material might be a question of fact."). *See, e.g., Haiman v. Fed. Ins. Co.,* 798 So.2d 811 (Fla. 4th DCA 2001) (holding that materiality is a jury question); *see also, Flores v. Allstate Ins. Co.,* 819 So.2d 740 (Fla. 2002) (submission of a fraudulent PIP bill did not void UM coverage); *Pena v. Citizens Property Insurance Co.,* 88 So.3d 965 (Fla. 2d DCA 2012).

Therefore, should this Court interpret the relevant case and statutory law to trigger notice to Homeowners only when there is a material change, the Final Judgment should still be reversed and remanded for a fact finder to determine whether the change was material.

II. THE TRIAL COURT COMMITTED ERROR WHEN IT GRANTED SUMMARY JUDGMENT FOR INSURANCE COMPANY

a. Standard of Review[16]

"A [trial court] properly grants summary judgment when the movant shows that 'there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.'" *See Hegel v. First Liberty*

[16]Effective May 1, 2021, the summary judgment standard provided for under Fla. R. Civ. P. 1.510(c) is to be construed and applied in accordance with the federal summary judgment standard articulated in *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Anderson v. Liberty Lobby*, *Inc.*, 477 U.S. 242 (1986); and *Matsushita Elec. Indus. Co. v. Zenith Radio Corp*., 475 U.S. 574 (1986). *See In re: Amendment to Fla. R. Civ. Pro. 1.510(c)*. Consequently, summary judgment should only be granted when the record shows that there is no genuine dispute as to any material fact and that the moving party is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(a); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 323-25 (1986).

However, the party that is "seeking summary judgment must demonstrate that 'there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law"' and the moving party bears the initial burden of informing the court of the basis for its motion and of identifying those materials that demonstrate the absence of a genuine issue of material fact." *See Rice-Lamar v. City of Ft. Lauderdale*, 232 F.3d 836, 840 (11th Cir. 2000) (citations omitted).

Ins. Corp., 778 F.3d 1214 (11th Cir. 2015). "'The district court [must] consider all evidence in the record when reviewing a motion for summary judgment--pleadings, depositions, interrogatories, affidavits, etc.--and can only grant summary judgment if everything in the record demonstrates that no genuine issue of material fact exists.'" *See Strickland v. Norfolk S. Ry. Co*., 692 F.3d 1151, 1154 (11th Cir. 2012).

"Summary judgment is such a lethal weapon, depriving a litigant of a trial on the issue, caution must be used to ensure only those cases devoid of any need for factual determinations are disposed of by summary judgment." *See Tippens v. Celotex Corp*., 805 F.2d 949, 952-53 (11th Cir. 1986). Indeed, "[s]ummary judgment may be inappropriate even where the parties agree on the basic facts, but disagree about the factual inferences that should be drawn from these facts. Id. If reasonable minds might differ on the inferences arising from undisputed facts, then the court should deny summary judgment." *See Impossible Elec. Techniques, Inc. v. Wackenhut Protective Sys., Inc.*, 669 F.2d 1026, 1031 (5th Cir. 1982).

b. Insurance Company failed to meet its burden as the Movant

Insurance Company failed to meet its burden of establishing the absence of any genuine issues of material facts. Rule 1.510(c)(1) requires a moving party to support its factual assertions by reference to materials in

the record, depositions, affidavits, etc. Rule 1.510(c)(2) provides that a party "may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence." When a party relies upon business records to support its factual assertions, an affidavit is required to present evidence under Fla. Stat. §90.803(6), the business records exception to the hearsay rule ("Business Records Exception"). Under the Business Records Exception, an affiant may be able to testify concerning business records and authenticate documents by demonstrating:

> (1) that the record was made at or near the time of the event; (2) that it was made by or from information transmitted by a person with knowledge; (3) that it was kept in the ordinary course of a regularly conducted business activity; and (4) that it was a regular practice of that business to make such a record.

See Bank of N.Y. v. Calloway, 157 So.3d 1064, 1069 (Fla. 4th DCA 2015) (citing *Yisrael v. State*, 993 So.2d 952, 956 (Fla. 2008)). In applying the statute, it is not sufficient for an affidavit merely to recite the elements of the Business Records Exception. *See Sacks v. Bank of New York Mellon*, 264 So. 3d 938, 941 (Fla. 4th DCA 2018).

Recently, this Court issued an opinion in *Savoy v. American Platinum Property & Casualty Insurance*, 363 So. 3d 1102, 1106 (Fla. 4th DCA 2023), in which it concluded that the trial court erred in granting summary judgment to the insurer in reliance upon the "deficient" affidavit of the insurer's

corporate representative. The corporate representative’s affidavit was significant because it introduced correspondence between the insurer and the insured’s public adjuster and affirmed that various communications were sent. *See id*. at 1106. The insured parties challenged the corporate representative’s competence “to authenticate the company’s file materials and identify them as records kept in the ordinary course of business. The insurer counter[ed] that the corporate representative was not required to possess any personal knowledge because he was the corporate representative.” *See id*.

The Court concluded that “corporate representative affidavits in support of summary judgment are not excepted from the personal knowledge requirement” of Rule 1.510(c)(4). *See id*. The Court explained:

> …the [corporate representative] affiant provided no basis for the affiant's personal knowledge or competency. The corporate representative simply stated his knowledge was “based upon my review of [the insurer's] file” and he was “serving as Corporate Representative in these actions for [the insurer].” He did not provide any further basis for his knowledge, much less indicate any employment, training, or experience that might provide him with personal knowledge of the insurer's recordkeeping practices. He did not even claim any personal knowledge of these practices (apart from a conclusory restating of the elements of the business records exception).

See id. at 1107. Particularly relevant to this case, the Court continued:

> Furthermore, the corporate representative's statements that various letters were mailed required additional proof. The mere fact that a letter was drafted “is not enough to allow a trial court

> to infer that the letter was mailed." Mace v. M&T Bank, 292 So. 3d 1215, 1219 (Fla. 2d DCA 2020). Instead, a witness generally must: (1) have personal knowledge of the mailing, (2) provide evidence of routine mailing practices, or (3) provide records of the mailing, such as a log or return receipt. Id. at 1219-20. The corporate representative's affidavit in this case did not come close to providing such evidence.

See id. The Court relied upon its previous decision in *Gromann v. Avatar Prop. & Cas. Ins. Co.*, 345 So. 3d 298, 300 (Fla. 4th DCA 2022); *Huertas v. Avatar Prop. & Cas. Ins. Co.*, 333 So. 3d 767, 771 (Fla. 4th DCA 2022), and the Second District Court of Appeals decision in *Rodriguez v. Avatar Property & Casualty Insurance Co.,* 290 So. 3d 560 (Fla. 2d DCA 2020). In each of these cases, the Courts reiterated the application of the personal knowledge standard to insurance companies' corporate representatives and reject as insufficient affidavits of corporate representatives that are mere recitations of language used in motions for summary judgment.

Savoy is also consistent with the well-settled principle that unauthenticated documents cannot form the basis for summary judgment. *See e.g., State Farm Mut. Auto. Ins. Co. v. Figler Family Chiropractic,* P.A., 189 So. 3d 970, 974 (Fla. 4th DCA 2016 (holding neither movant nor opponent may rely upon any evidence, even if already on file, unless it was identified in its timely filed notice); *see also, Adams v. Bell Partners, Inc.,* 138 So. 3d 1054, 1057 (Fla. 4th DCA 2014) ("Determination of the appropriateness of the motion is better facilitated when issues and evidence

are clearly identified in advance of the hearing on the motion."); *Bryson v. Branch Banking & Trust Co.*, 75 So.3d 783, 785 (Fla. 2d DCA 2011) (citing *Daeda v. Blue Cross & Blue Shield of Fla., Inc.*, 698 So. 2d 617, 618 (Fla. 2d DCA 1997).

Merely attaching documents which are not properly "sworn to or certified" to a motion for summary judgment or affidavit in support does not, without more, satisfy the procedural strictures inherent [Rule 1.530]. *See Gidwani v. Roberts*, 248 So. 3d 203, 208 (Fla. 3d DCA 2018) ("[A] document attached to a motion for summary judgment or a document attached to an affidavit that is not otherwise authenticated is not competent evidence."); *Freiday v. One West Bank, FSB*, 162 So. 3d 86, 87 (Fla. 4th DCA 2014) (same); *Booker v. Sarasota,* 707 So.2d 886, 889 (Fla. 1st DCA 1998) (Reversing final summary judgment because a "Florida court may not consider an unauthenticated document in ruling on a motion for summary judgment, even where it appears that the such document, if properly authenticated, may have been dispositive."); *Green v. JPMorgan Chase Bank, NA*, 109 So.3d 1285, 1288 n. 2 (Fla. 5th DCA 2013).

c. Insurance Company failed to establish Homeowners breached the Policy

In its motion, Insurance Company conclusively states that "[Homeowners] materially breached the policy by failing to comply with [sic]

Drew v. Mobile USA Ins. Co., 920 So.2d 832, 835-36 (Fla. 4th DCA 2006). (R. 2412). Presumably, Insurance Company was arguing that Homeowners failure to sign the Repair Option Contract. However, the 2011 Renewal Policy gives Insurance Company 30 days from receipt of Homeowners "signed, sworn proof of loss" to exercise its option to repair. (R. 1828). The Policy does not require Homeowners to automatically submit a "signed, sworn proof of loss" but instead required Homeowners to "[s]end to us, within 60 days after our request, your signed, sworn proof of loss" with eight different categories of information. (R. 1827, ¶h.(1)-(8)).

Absent record evidence that Insurance Company requested and received a "signed, sworn proof of loss" from Homeowners, even assuming Homeowners were bound by the revised Option to Repair language and the Preferred Contractor Endorsement, there is nothing in the record that triggered an obligation for Homeowners to sign the Repair Option Contract.

Insurance Company cites to *People's Trust Ins. Co. v. Amaro*, 319 So.3d 747 (Fla. 3d DCA 2021) where the Third District noted "the record supports the conclusion that [the insured] failed to substantially comply with his contractually mandated post-loss obligations, ultimately rendering impossible People's Trust's performance of its contractual obligation to repair." (R. 2413). It goes on to discuss other cases where policies provided

insurance carriers with the unilateral option to repair an insured's property (as opposed to paying for repairs in accordance with the loss settlement provision), and seems to insinuate that Homeowners have made the repairs, which justifies summary judgment in Insurance Company's favor. (R. 2413-2414). While Homeowners might have made repairs, Insurance Company failed to cite to a portion of the Record in this case to support its position.

III. THE TRIAL COURT COMMITTED ERROR WHEN IT DENIED HOMEOWNERS' REQUEST FOR LEAVE TO FILE THE THIRD AMENDED COMPLAINT TO ASSERT A CLAIM FOR NEGLIGENT MISREPRESENTATION

a. Standard of Review

A trial court's refusal to permit an amendment to a pleading is reviewed under an abuse of discretion standard. *See Southern Developers & Earthmoving Inc. v. Caterpillar Financial Sales Corporation*, 56 So.3d 56, 62 (Fla. 2d DCA 2011).

b. Homeowners should have been permitted to sue Insurance Company for negligent misrepresentation

Public policy favors the liberal amendments of pleadings so that cases may be decided on their merits." *See Southern Developers & Earthmoving Inc. v. Caterpillar Financial Sales Corporation*, 56 So.3d 56, 62 (Fla. 2d DCA 2011) ("All doubts must be resolved in favor of allowing the amendment of pleadings.") Florida's liberal rule governing amendments to pleadings states:

"[l]eave of court [to amend pleadings] shall be given freely when justice so requires." *See* Fla. R. Civ. P. 1.190(a); *see also Thompson v. Jared Kane Co., Inc.*, 872 So.2d 356, 360 (Fla. 2d DCA 2004) (stating that requests for leave to amend should be granted absent exceptional circumstances and "all doubts should be resolved in favor of allowing an amendment") (*citing Adams v. Knabb Turpentine Co.*, 435 So.2d 944 (Fla. 1st DCA 1983). Moreover, "[c]ourts should be especially liberal when leave to amend is sought at or before a hearing on a motion for summary judgment." *See Laurencio v. Deutsche Bank National Trust Company*, 65 So. 3d 1190, 1193 (Fla. 2d DCA 2011) (*quoting Bill Williams Air Conditioning & Heating Inc. v. Haymarket Co-op. Bank*, 582 So.2d 302, 305 (Fla. 1st DCA 1991).

A trial court abuses its discretion when it refuses to grant leave to amend unless it clearly appears that (1) allowing the amendment would prejudice the opposing party; (2) the privilege has been abused; (3) the amendment would be futile. *See Gerber Trade Fin., Inc. v. Bayou Dock Seafood Co*., 917 So. 2d 964, 968 (Fla. 3d DCA 2005). None of those factors justified the denial of the Motion to Amend.

As outlined above, Homeowners were not attempting to relitigate issues already determined. Instead, they were raising a new cause of action, the factual basis for which had been discovered through the discovery

process. It was error for the trial court not to grant Homeowners leave to file the Third Amended Complaint.

CONCLUSION

For the reasons set forth above, Homeowners respectfully request that this Court reverse the Final Judgment and remand the matter back with instructions for the trial court to grant partial summary judgment in their favor as to Insurance Company's failure to provide the notice required under Florida law, and for further proceedings consistent with that determination.

Alternatively, Homeowners respectfully request that this Court reverse the Final Judgment and remand the matter back for a fact finder to determine whether the coverage change between the Initial Policy and the 2011 Renewal Policy were material.

Alternatively, and in conjunction with the other relief sought herein, Homeowners also request that this Court reverse the Final Judgment and remand the matter back with instructions for the trial court to permit them to file the Third Amended Complaint.

Respectfully submitted,

/s/ Melissa A. Giasi
Melissa A. Giasi
Florida Bar No. 37807
melissa@giasilaw.com
Erin M. Berger
Florida Bar No. 14977
eberger@giasilaw.com
GIASI LAW, P.A.
400 North Ashley Drive, Suite 1900
Tampa, FL 33602

Phone: 813-816-1880
Counsel for Appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Initial Brief of Appellants was filed with the Florida Courts E-Filing Portal which furnished a copy via electronic mail to: Candise L. Shanbron, Esq., Cernitz Law, 9500 South Dadeland Blvd, Ste 350, Miami, FL 33156 cshanbron@cernitzlaw.com; Trial Co-Counsel for Appellants; and to Blake R. Hodges, Esq., Beck Law, PA, 901 Clint Moore Rd, Ste C, Boca Raton, FL 33487, pleadings@becklawpa.com; hodges@becklawpa.com; Trial Co-Counsel for Appellee; and to Patrick M. Chidnese, Esq., Bickford & Chidnese, LLP 307 S. Willow Avenue Ste 100, Tampa, FL 33606, patrick@bcflalaw.com; april@bcflalaw.com; frieda@bcflalaw.com; Counsel for Appellee; on this 19th day of December, 2023.

/s/ Melissa A. Giasi
Melissa A. Giasi

CERTIFICATE OF COMPLIANCE WITH FONT STANDARDS

I HEREBY CERTIFY that the Initial Brief of Appellants complies with the requirements of Fla.R.App.P. 9.210(a)(2). The font is 14-point Arial. The word has been calculated by the word-processing system, and it excludes the content authorized to be excluded under the rule, but it includes any footnote.

/s/ Melissa A. Giasi
Melissa A. Giasi