CASE LAW STUDY HALL

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Mezadieu v. Safepoint Insurance Company, 315 So.3d 26 (Fla. 4th DCA 2021)

- Insured made a claim for a plumbing leak which originated in her second-floor bathroom.
- Insured's loss consultant (Contender Claims) provided a detailed estimate of the damages totaling $43,181.01. This estimate included damages to nearly every room of the property.
- Insurer subsequently denied the claim and insured filed suit for damages stemming from the claim.
- During litigation, insurer propounded written factual interrogatories, one of which asked the insured to "[d]escribe in as much detail as you will provide at trial the damages you are claiming as a result of the lawsuit and please provide an itemized breakdown of the damages as well as your method of calculation." Insured responded that damages totaled "$43,181.01, as per the written estimate prepared by [Contender] ….." and later confirmed she was claiming $43,181.01 in deposition.
- However, when questioned about the line items of the estimate, as they pertained to the kitchen (including damage to the kitchen cabinets), the insured admitted that the kitchen cabinets had been damaged by a prior leak in the kitchen, for which a claim was made with a different insurer, and that the current claim did not cause any damage to the kitchen cabinets.
- Additionally, the insured acknowledged that she did not see damage in any of the other rooms on the first-floor of the property and that the water remediation company she hired did not render any services on the first floor (despite the fact that such damages were included in the estimate the insured was relying upon).
- Attorney conceded that the estimate contained false statements as a matter of law.

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- As a result of the deposition testimony and the sworn written interrogatories, the insurer amended its answer and Affirmative Defenses to include a defense based on the operative policy's "concealment or fraud" provision"

- The lawsuit eventually proceeded to a hearing on the insurer's summary judgment motion. At the hearing, the insured contended that while she agreed with the filed Sworn Proof of Loss and adopted the Contender estimate, the estimate should not have included the $11,000 in damages related to the kitchen cabinets and it would therefore be appropriate for the trial court to grant partial summary judgment or otherwise strike $11,000 from the total amount of damages claimed.

- The trial court concluded that the false statements made in the Contender estimate were "attributable" to the insured because she not only adopted the estimate as her own in the sworn interrogatory answers and deposition testimony, but because her Sworn Proof of Loss was identical to the amount of damages sought in the Contender estimate, and because Contender Claims was acting as her agent.

- On appeal, the insured argued that she should not be punished for the estimate prepared by Contender because she "did not intentionally rely on the false statements contained therein." The Fourth District Court of Appeals, however, agreed with the insurer and held that intentionality is not required, and that the material false statements made in the estimate were "attributable" to the insured because she adopted the estimate as her own statement.

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- In closing, the Fourth District stated that while "an insured cannot blindly rely on and adopt an estimate prepared by his or her loss consultant without consequences [and] that when an insured relies on or adopts an estimate containing material false statement to support this or her claim, the insured is bound by the estimate and cannot avoid application of the concealment or fraud provision simply because he or she did not prepare the estimate."

Anchor Property and Casualty Insurance Company v. Alex Trif and George Trif, 46 Fla. L. Weekly D1267a.

- Insureds made a claim for damages stemming from Hurricane Irma, which was denied by the insurer.
- Thereafter, in support of a supplemental claim, the insureds' hired Exactimators to investigate the claim and provide an estimate of damages. The estimate set forth a "net claim" of $103,809.68 including damages to the roof and screened pool enclosures.
- As in Mezadieu, the insureds' Sworn Proof of Loss was identical to the estimate in the amount of damages being sought, and while the estimate was not referenced in the Sworn Proof of Loss, the insureds conceded that the damages set forth therein were based on the Sworn Proof of Loss.
- During litigation, the insurer included the "Concealment or Fraud" provision of the operative policy in its Answer and Affirmative Defenses and alleged that the insureds made willful misrepresentations and materially false statement regarding the pre-loss condition of the property as the insureds had "denied that any pre-loss roof leaks had occurred," when a 2012 insurance claim investigation revealed roof leaks.
- Additionally, and of most significance in this decision, the insurer claimed that the insureds made willful misrepresentations and materially false statements regarding the "extent and/or amount of damage" at issue, specifically, the extent of damage to the flooring in the property, as the insureds had denied that any pre-loss roof leaks had occurred.

Anchor Property and Casualty Insurance Company v. Alex Trif and George Trif, 46 Fla. L. Weekly D1267a.

- During trial, the insureds testified that they had been given different estimates of the costs to replace the roof on the property and acknowledged that one of the competing estimates was "a lot less" than the Exactimators estimate for the same roof replacement. Additionally, the insureds stated that they were "professionally advised" to submit the Sworn Proof of Loss in the amount of $103,809.68.
- As a result of the foregoing, the insurer moved for a directed verdict as to the "Concealment or Fraud" provision of the operative policy.
- The trial court, however, found that the insurer failed to plead with specificity that the insureds violated the "Concealment or Fraud" provision of the operative policy by submitting a Sworn Proof of Loss based on a material misrepresentation concerning the cost to replace the roof.
- The Fourth District Court of Appeals was careful to distinguish Trif from Mezadieu. The Fourth District Court of Appeals stated that unlike in Mezadieu, where the insureds "clearly knew" that the kitchen had not been damaged by the leak, in Trif, a reasonable jury could have concluded that the insureds "did not make any material false statements in connection with the Sworn Proof of Loss because, viewing the evidence most favorable to the insureds, (1) there was no admission that the $52,800 roof replacement estimate was false s opposed to a mistake or merely a high estimate; … and (8) the public adjuster corrected the roofing estimate before [the insurer] made any argument that it was inflated."
- Additionally, the Trif court found that because the insurer had already inspected the roof and denied coverage for it, a reasonably jury could have concluded that the high initial roofing estimate was not material because it was not likely to affect the conduct or investigation of a reasonable insurer in the same position (i.e. that the insurer conducted the investigation, inspected the roof and denied coverage).

All Insurance Restoration Services v. Citizens Property Ins. Corp.; 328 So. 3d 1057 (Fla. 3d DCA 2021)

- **Facts**
  - Insureds suffered water damage due to refrigerator leak on Oct. 22, 2017 and hired Plaintiff ("AIRS") on October 26, 2017 to perform water mitigation services via an Assignment of Benefits (the "AoB")
  - AIRS sent an email to the Insurer attaching its "water mitigation package" which included the AoB and an invoice for $7,238.75 for the services it rendered
  - Neither AIRS nor the Insureds submitted to the Insurer a request to exceed the subject policy's $3,000 limit for reasonable emergency measures
  - The Insurer admitted coverage and sent a check in the amount of $3,000 to the insureds for payment "towards reasonable emergency measures limit of liability portion of the loss"
  - Subsequent to cashing the check, AIRS filed suit against the Insurer for the alleged failure to completely pay AIRS for the services

All Insurance Restoration Services v. Citizens Property Ins. Corp.; 328 So. 3d 1057. (Fla. 3d DCA 2021) (Cont.)

- **Trial Court**
  - The Insurer filed a Motion for Summary Judgment based upon the language of the policy limiting the "reasonable emergency measures" to $3,000**.**
  - In response, AIRS asserted that the email it sent on November 29, 2017, which included that AoB and invoice was its "request" to exceed the $3,000 coverage limit and that because the Insurer failed to respond to the email within the required forty-eight (48) hours, the Insurer must pay AIRS *in full*.
  - The trial court granted the Insurer's Motion for Summary Judgment and stated that the "Insurer fully satisfied its obligations by paying the $3,000" and that the Insureds "failed to meet [their] burden to show that the [Insurer] breached the terms of the policy."
- **Appellate Ct. Decision**
  - AIRS appealed the trial court ruling arguing that the trial court re-wrote the insurance contact and relieved the Insurer of its obligation to reply to AIRS' email "request"
  - Appellate court held that "there was nothing in the email requesting approval to perform work in excess of $3,000" and that "[u]nder the plain and ordinary meaning of the Policy provision, a demand for payment in excess of $3,000 via an invoice for services that have already been completed is not a request to exceed" the $3,000 cap.
- **Pro Tip**
  - If you have an AOB claim that should otherwise be covered, consider paying the $3,000 limit if and only if no request to exceed was submitted (Whether or not the AoB itself includes a "Request to Exceed" within the provision of the AoB itself will be discussed shortly).
  - If no Request to Exceed was submitted and you pay the $3,000 (or 1% percent of Coverage A) limit and the AoB company sues for the remainder, this case will work to limit the coverage to the applicable cap. This will also prevent you from liability for attorney's fees associated with a lawsuit.

Certified Priority Restoration a/a/o James Krempler v. Citizens Property Ins. Corp.; 324 So. 3d 5 (Fla. 4th DCA 2021) – SIMILAR TO "AIRS" BUT SIGNIFICANTLY DIFFERENT

- **Facts**
  - Certified Priority Restoration ("CPR") provided water-loss mitigation services at property owned by Insured.
  - AoB from CPR included a paragraph entitled "Request to Exceed Cap" which not only affirmed the understanding of both CPR and the Insureds but stated that "should such a cap be contained in the insureds policy, this term operates as a direct request to the Insured's insurance company for approval to exceed such cap upon submission of this document."
  - CPR emailed Citizens *after* repairs were completed and attached 18 pages of documents to the email which included (for the first time) CPR's AoB, an invoice for the services and photographs of the water damage.
  - CPR did not specifically request approval for payment exceeding the cap in the email nor did it draw attention to that paragraph of the AoB referencing the request.
  - Citizens admitted coverage and remitted $3,000 to the Plaintiff.
  - CPR filed suit and asserted that its email which contained the AoB functioned as an official request to exceed the cap and that because Citizens failed to respond to CPR within 48 hours of CPR's request, the cap became "inapplicable" pursuant to the policy.
  - CPR also argues that part of their invoice was incurred for the removal of "damp, moldy drywall" which constituted "removal of debris".

Certified Priority Restoration a/a/o James Krempler v. Citizens Property Ins. Corp.; 324 So. 3d 5 (Fla. 4th DCA 2021) Cont.

- **Trial Court**
  - Trial court granted Citizens' motion for summary judgment finding that the email sent by CPR was not a valid request to exceed the cap but was instead "an intentional gotcha type tactic … to avoid the Reasonable Emergency Measure provision of the policy."
  - Trial court also articulated that under the common definition of "debris", CPR's removal of wet drywall was not "debris removal" but simply a part of its water mitigation services.
- **Appellate Court**
  - Court found that in both its Complaint and response in opposition to Citizens MSJ, CPR submitted and relied only upon the email and its attachments in arguing that is properly requested to exceed the operative cap
  - The record supports the trial court's assessment that the foregoing was, in fact, a "gotcha" type tactic to create a situation where the policy's 48 hour deadline for a response was both intended and likely to be missed.
  - Additionally, the Appellate Court held that CPR did not perform "debris removal" as the removal of drywall does not qualify as such because, although the damaged drywall and demolition thereof caused "debris," the demolition itself is not "debris removal".

Enrique and Yahoska Arguello v. People's Trust Ins. Co.;
315 So. 3d 35 (Fla. 4th DCA 2021).

- **Facts**
  - Insureds suffered a plumbing loss due to a leak from the dishwasher but did not submit a claim for damages until 6 months after the date of loss.
  - PTIC send ROR letter stating that it was reserving its rights because Insureds did not give prompt notice. ROR letter also requested a signed, sworn proof of loss.
  - Subsequently, upon receive from email notifying Insurer that All Claims solutions (the PA) would be representing the Insureds, PTIC sent the PA a Request for Information Letter" including a request for the SPOL
  - After inspecting the property, PTIC accepted coverage and invoked its option to repair. Thereafter, PTIC sent multiple emails and written correspondence, both the Insured and the PA regarding their request for a Sworn Proof of Loss and ultimately warned that coverage may be rescinded if SPOL was not received. Thereafter, PTIC filed a Complaint for Declaratory Judgment and for breach of the policy and election to repair contract.
  - Insured finally filed SPOL after PTIC filed suit and on the SPOL, with regard to the amount of the damage only stated "pre-loss condition".

Enrique and Yahoska Arguello v. People's Trust Ins. Co.; 315 So. 3d 35 (Fla. 4th DCA 2021). Cont.

- **Trial Court**
  - Trial court granted PTIC's MSJ and concluded that there was a total failure to comply with the SPOL. The FJ stated simply that the "final judgment was entered in favor of Plaintiffs."
- **Appellate Court (Reversed and remanded for further proceedings)**
  - Insureds contended that the trial court erred in granting SJ because: (1) the policy language did not requires the submission of a SPOL in the circumstance where insurer elected to repair the property; and (2) material issues of fact existed as to the Insureds' compliance with the conditions and whether PTIC was prejudiced by lack of such compliance.
  - The Appellate court stated that while the Policy does require a SPOL a material fact did exist as to whether PTIC was prejudiced by the Insureds' failure to submit the SPOL
  - In this case, the Court found that the policy provides that "we [Insurer] have no duty to provide coverage under this policy if the failure to comply with the following duties is prejudicial to us." As such, any failure to comply with policy conditions requires prejudice to PTIC in order for such a failure to constitute a material breach and permit the denial of a claim. Whether or not an insurer is prejudiced is a matter of fact not law.
  - PTIC offered not proof of prejudice in support of its MSJ and argued that it is entitled to a presumption of prejudice. In doing so, PTIC relied on case law holding that an insurer is afforded the presumption of prejudice where an insured failed to comply with the policy's post loss obligations. See e.g. Estrada, 276 So. 3d at 916.
  - Appellate court reversed trial court's entry of SJ and remanded for further proceedings.

Gene and Kathleen Dodge v. People's Trust. Ins. Co.; 321 So. 3d 831 (Fla. 4th DCA 2021).

- **Facts**
  - Water overflow from plumbing system caused damage to Insureds' home
  - Parties agree that the loss resulted from the deterioration of the cast iron pipes under home because of "rust or other corrosion"
  - PTIC accepted coverage and remitted check for $10,000 to Insureds pursuant to Limited Water Damage Endorsement ("LWD") in policy
  - Trial court entered judgment in favor of PTIC and limited the damages to $10,000 under the LWD.
- **Appellate Court**
  - Issue on appeal is whether the policy limits coverage to $10,000. The Court articulated that the answer depends on the definition of the term "act of nature" in the policy.
  - The Policy exclusion states that it did "not insure for loss caused directly or indirectly by any of the following. Such loss is excluded regardless of any other cause or event contributing concurrently or in any sequence to the loss …" Once excluded clause that followed was "Water", which the Policy defines as the "[d]ischarge or overflow of water or steam from within a plumbing, heating, air conditioning or automatic fire sprinkler system or from within a household appliance….caused by or resulting from human or animal forces or any act of nature.
  - The LWD provided coverage subject to a $10,000 sub-limit for the following losses: [s]udden and accidental direct physical loss to covered property by discharge or overflow of water or steam from within a plumbing, heating, air conditioning, or automatic fire protective sprinkler system or from or within a household appliance.

- **Appellate Court (cont.)**
  - Court stated that if the "rust or other corrosion" that caused the loss was an "act of nature" then PTIC correctly limited coverage otherwise the sub-limit did not apply.
  - The phrase "act of nature" is not defined in the Policy and thus the Court needed to consult references commonly relied upon to supply the accepted meaning of the words. The Court provided that, in doing so, Florida courts commonly adopt the plaint meaning of words contained in non-legal dictionaries.
  - The Court articulated that "act" and "nature" can reasonably be interpreted to define the everyday meaning of "act of nature" as "the doing of the inherent character of a thing."
  - Court found that rust and corrosion fit within the definition of "act of nature" as "rust" is defined as the "reddish brittle coating formed on iron when chemically attacked by moist air" and "corrosion" is defined as "the action, process, or effect of corroding, which is to wear away gradually by chemical action.
  - Court concluded that the phrase "act of nature" does not require an uncontrollable or unpreventable event and excludes damage caused by an act of nature or natural forces
  - Here, the loss was caused by a natural act and the $10,000 LWD applies

General Contrs. of Cent. Fla. LLC v. Heritage Property; 2021 Fla. App. LEXIS 15228 (Fla. 3d DCA 2021).

- **Facts**
  - Plaintiff appeals from order dismissing Complaint seeking payment for emergency water removal services rendered pursuant to an AoB for damages to the Insureds' property
  - Undisputed that only one of the Insureds executed the AoB and that mortgagee did not consent in writing to the AoB
  - Policy provides the following: "[a]ny person or entity that effectuates repairs to property insured under this policy is not entitled to perform those repairs or receive compensation for services using an assignment of benefits or any instrument that transfers any post loss rights under the insurance contract without the prior written consent of all "insureds", all additional insureds and all mortgagees named in the policy.
- **Trial Court**
  - Trial court dismissed the complaint and concluded that Plaintiff lacked standing to sue. Trial court relied on holding in Restoration 1 of Port St. Lucie v. Ark Royal Ins. Co., 255 So. 3d 344 (Fla. 4th DCA 2018) which held that a provision of a property insurance policy requiring the consent of all insureds and the mortgagee before the insureds' rights may be assigned is enforceable.
  - However, at the time of the trial court's ruling, the appellate court had not yet expressly determined whether such a provision was enforceable.
- **Appellate Court**
  - Since the trial court's ruling, the appellate court adopted the Restoration 1 holding.
  - Court affirmed based on Restoration 1.

Alvarez v. Citizens Property Ins. Corp.; 328 So. 3d 61 (Fla. 3d DCA 2021).

- **Facts**
  - Insureds property suffered damage due to a leak from a pressurized water supply line and filed claim with Citizens.
  - After inspection, Citizens determined that 5 floor tiles needed to be replaced and made ACV payment for $7,108.47 after deductible.
  - Insureds contend that the damage to the tile floor was more extensive and filed a supplemental claim for $111,603.75.
  - Citizens denied supplemental claim and Insureds sued for declaratory relief and breach of contract.
- **Trial Court**
  - Citizens filed MSJ
  - In response, Insureds filed two affidavits in opposition to Citizens MSJ: (1) Affidavit from PA disputing value of Citizens evaluation and amount of loss; and (2) Affidavit of engineer whose inspection was the basis of Insureds' belief that floor tile was damaged throughout house
  - Insureds' engineer testified that he conducted a tapping test from room to room and concluded that the floor tiles were "almost uniformly debonded … and required replacement." The engineer also testified that the debonding was the direct consequence of water absorption from the leak
  - At MSJ hearing, Citizens argued that the engineer's debonding testimony was speculative and conclusory
  - Trial court granted Citizens' MSJ

Alvarez v. Citizens Property Ins. Corp.; 328 So. 3d 61 (Fla. 3d DCA 2021). (Cont.)

- **Appellate Court**
  - Court found that Citizens summary judgment evidence did not address debondment
  - Coincidentally, the insureds' engineer in *Gonzalez v. Citizens Property Insurance Corp*., 273 So. 3d 1031 (Fla. 3d DCA 2019), upon which Citizens relied here, was Alfredo Brizuela, the same engineer in the instant case.
  - In *Gonzalez* the insureds filed 2 affidavits of Brizuela which contained discrepancies in and amongst themselves and the Court granted summary judgment on the grounds that because there were discrepancies between the two affidavits they are inadmissible as they were based on conjecture rather than fact-based reasoning
  - Here, Citizens summary judgment did not address debondment and the appellate court found that the trial court appears to have weighed the evidence, rather than having determined whether a genuine issue of material fact exists and reversed the case on procedural grounds.
- **PRO TIP**
  - Inconsistent testimony (i.e. various affidavits and/or testimony from depositions) can rise to the level necessary to have summary judgment granted on grounds of inconsistency and conjecture.

Nunez v. Universal Property & Casualty Insurance Company; 325 So. 3d 267 (Fla. 3d DCA 2021).

- **Facts**
  - Insured reported 2 water losses occurring two days apart – one in the kitchen and second due to a leak in the bathroom of the Property.
  - Claims reported simultaneously and Universal immediately requested a SPOL which was not received from the Insured for 75 days.
  - Undisputed that Universal also requested that Insureds sit for EUO and that Insureds subsequently failed to appear after multiple requests.
  - Universal denied claim and stated that Insureds forfeited her rights to receive benefits as they failed to sit for EUO.
- **Trial Court**
  - Insureds argued that it was unreasonable for Universal to request EUO 110 days after claims were reported.
  - Trial court rejected Universal's argument explaining that (given the totality of the circumstances – i.e. SPOL submitted and Insureds sat for recorded statement) that the jury did not find the Insureds' failure to attend EUO "unreasonable".
  - Trial court entered judgment in favor of Insureds.
  - Universal filed a Motion for re-hearing on grounds that the trial court erred by "elevating Universal's burden of proof" to establish that it was unreasonable for the Insureds to not show for the EUO. The day before the hearing on Universal's motion, the third district released its opinion in American Integrity Insurance Company v. Estrada
  - A successor judge presided over Universal's motion and determined that the jury had not been properly instructed and questioned if there was "evidence of prejudice" to Universal and whether the fairer approach would be grant to a new trial under the construct of Estrada
  - Trial court entered an order granting Universal's motion for directed verdict and ordered a new trial. Trial court (successor judge) found that the insureds breached the contract when they failed to appear for the EUO and that the court erred when it placed upon Universal a burden of establishing that the breach was "unreasonable".

Nunez v. Universal Property & Casualty Insurance Company; 325 So. 3d 267 (Fla. 3d DCA 2021). (Cont.)

- **Appellate Court**
  - Successor judge correctly directed a verdict on the question of whether the Insureds materially breach the contract and, further granted the motion for new trial on whether such breach was prejudicial to Universal. Court articulated that this result was controlled by *Estrada* which, for the first time, addressed "whether, after a finding has been made than an insured materially breached a post-loss policy provision, a further finding must also be made that the insured's non-compliance caused prejudice to the insurer."
  - Court took the position that the evidence presented a trial created a question of fact for the jury on whether the Insureds "willfully breach the terms of the policy." Insureds stated that they complied with the policy in all other respects
  - Court held, that the Insureds' compliance on other matters, e.g. prompt notice, allowing Universal to inspect and providing a sworn proof of loss, does not bear on whether Insureds substantially complied with the specific, pertinent policy provisions requiring the EUO and relied upon *Edwards*, 318 So. 3d 16 for the fact that actual compliance with other policy requirements or conditions is not evidence of substantial compliance with the pertinent policy provision at issue

Archer v. Tower Hill Signature Ins. Co.; 313 So. 3d 645 (Fla. 4th DCA, 2021).

- **Facts**
  - Insureds policy had a water damage exclusion that was later superseded by 2 endorsements: (1) Water Damage Exclusion Endorsement; and (2) Special Provisions for Florida Endorsement
  - Through her public adjuster, the Insureds notified Tower Hill of 2 separate claims that occurred on 2 separate dates: (1) a plumbing leak; and (2) roof damage from Hurricane Irma.
  - Tower Hill denied the claims and the Insureds subsequently filed suit against Tower Hill for declaratory relief as to the plumbing leak and for breach of contract as to the roof claim.
- **Trial Court**
  - Tower Hill moved for summary judgment and argued that there was no damage to the roof caused by the hurricane and that the water damage exclusion excluded coverage for the damaged alleged by the Insured
  - In support of the MSJ, Tower Hill filed multiple affidavits including the affidavit of its FJ who inspected the property and determined that the roof was at least 20 years old; The FA further stated that he did not see any openings in the roof or any obvious wind-related damage
  - Conversely the Insureds filed a response in opposition to the MSJ and a cross-MSJ relying on several of their own affidavits including that of their public adjuster which stated that "[based upon my inspection of Plaintiff's dwelling and my years of experience as a PA, the interior damages are consistent with damages that entered through openings created by Hurricane Irma."
  - The trial court entered summary judgment in favor of Tower Hill.

Archer v. Tower Hill Signature Ins. Co.; 313 So. 3d 645 (Fla. 4th DCA, 2021). (Cont.)

- **Appellate Court**
  - With respect to the hurricane claim, the appellate court held that the trial court properly entered summary judgment for Tower Hill.
  - The Court found that the policy provided coverage for water damage only when wind or hail creates an opening through which the water enters.
  - Tower Hill satisfied its initial burden of demonstrating no issues of material fact by submitting the affidavit of its FJ who did not see any openings in the roof through which water could have entered.
  - The Court found that the Insured, conversely, failed to meet her burden because her affidavits and deposition were conclusory.
  - The affidavits filed by the Insureds *did not describe the nature or appearances of the cracks and openings, what led the affiant to believe the cracks and openings were caused by wind from the hurricane, or the location of the cracks and openings on the roof*. The affiant only related to seeing "wind damage on the roof" but did not explain how there is wind damage or how the damage was caused by the wind. By merely reciting these conclusory statements, the affiant did not rebut the statements of Tower Hill's FA.
  - Additionally, the affidavit of the Insureds' PA did not say anything about the *public adjuster's qualifications, training, education, or methodology*. In fact, the PA never even stated that she saw any openings in the roof nor did the PA expound on her observations or explain how she came to her conclusion, other than to cite to her "years of experience as a PA."
  - The Court held that "no weight may be accorded an expert opinion which is totally conclusory in nature and is supported by any discernible, factually based chain of underlying reasoning."
  - With respect to the plumbing claim, the court found no ambiguity in the policy.

Goldman v. United Services Automobile Association; 244 So. 3d 310 (Fla. 4th DCA 2018).

- **Facts**
  - Insureds suffered a plumbing leak to their property and notified the Insurer. The Insurer investigated the claim and issued payment.
  - Without informing the Insurer that they disputed the amount of payment, the Insureds filed a lawsuit for breach of the insurance policy.
- **Trial Court**
  - Insurer immediately moved to compel and appraisal which occurred and the Insurer timely paid the appraisal award
  - Because the appraisal process established the amount of damages, and the Insurer paid that amount, the Court granted summary judgment in the Insurer's favor
  - Insureds appealed the summary judgment and relied heavily upon the case law from Johnson v. Omega Insurance Co., 200 So. 3d 1207 (Fla. 2016).
- **Appellate Court**
  - Appellate court held that *Johnson* is not applicable; In *Johnson*, the insurer denied the insureds' claim in its entirety, leaving the insureds with no option but to file a lawsuit.
  - Here, the insurer valued the loss and paid the claim based upon that valuation. The Insureds did not object and until the filing of the Complaint, the Insurer was unaware of a disagreement with the damage valuation. Additionally, once the Insurer was informed of the disagreement, the Insurer demanded and paid the appraisal.

Goldman v. United Services Automobile Association; 244 So. 3d 310 (Fla. 4th DCA 2018). (Cont.)

- **Appellate Court, Cont.**
  - Court found that there was never a breakdown in the claims adjusting or communications process, nor was there a refusal to pay the claim. In furtherance of this the Court articulated that "[i]t is only when the claims adjusting process breaks down and the parties are no longer working to resolve the claim within the contract, but are actually taking steps that breach the contract, that the insured may be entitled to an award of fees under section 627.428, Fla. Stat. *Hill v. State Farm Fla. Ins. Co.*, 35 So. 3d 956 (Fla 2d DCA 2010).
  - The Insureds argued that *Hill* is the incorrect denial of benefits and not some sinister concept of wrongfulness that triggers fees.
  - Here, the Court held that both here and in *Hill* the Insureds never gave the Insurer the opportunity to incorrectly deny the benefits before filing a lawsuit. Further, the Court found that as in *Hill* the issue here is "whether the lawsuit was filed to force [the insurer] to conduct an appraisal or whether it was merely a preemptive lawsuit intended to obtain attorneys' fees for the usual efforts in negotiating an insurance claim. The appellate court agreed with the circuit court in finding that this was the exact reason this lawsuit was filed.

Damage Services v. Citizens Property Insurance Corp.; 328 So. 3d 996 (Fla. 4th DCA 2021).

- **Facts**
  - Plaintiff sued Citizens for breach of contract for failing to pay for the water extraction services the Plaintiff performed at the Insureds Property.
  - Policy included $3,000 cap for emergency measures.
  - No request to exceed that cap was made by the Plaintiff or the Insureds.
- **Trial Court**
  - Citizens filed MSJ on basis that the policy provision limited damages for emergency measures to $3,000 unless a request was made to exceed the cap and an approval was given by Citizens.
  - Trial court entered summary judgment in favor of Citizens on grounds that that Plaintiff did not request to exceed the cap.
- **Appellate Court**
  - Court relied upon the *Certified Priority Case* discussed above and held there that "the clear wording of the policy established a reimbursement cap on expenses for emergency measures which could not be exceeded without a request to, and prior approval from, the insurer."
  - Plaintiff argued that it could recover under Coverage A of the policy, which insures against direct loss to the Property, because its invoice was for water extraction and remediation. Plaintiff argues that remediation could be for improvement to the property and thus not fall within the ambit of the emergency measures policy provision.
  - Here, the Plaintiffs Complaint described its work as "water extraction" and not as any type of repair; the Plaintiff did not file any type of affidavit to show that it had performed any work other than water extraction and, most importantly, the AoB assigned to the Plaintiff only its right to payment "*in regards to water extraction and dry out services, mold remediation and/or smoke damage*." To the extent that the Plaintiff performed any other work, it was not assigned the right to collect for that work, *including work done under Coverage A*.

Goldberg v. Universal Property and Casualty Company; 2020 Fla. App. LEXIS 12720.

- **Facts**
  - Insured's condo unit was damaged by Hurricane Irma
  - Operative policy contained an endorsement stating that "[w]e insure against risk of direct loss to property described in Coverage A, only if that loss is a physical loss to property." The previous endorsement *did* not cover personal property under Coverage C. Additionally, the policy contained an endorsement that required the Insured to provide Universal with a notice of "supplemental claim: caused by the peril of windstorm or hurricane.
  - Universal inspected the property after the Insured claimed that Hurricane Irma caused water damage because the condo association didn't secure the door due to a recent renovation and that once the hurricane came, wind forces seeped water into the baseboard and lower walls and the wooden floors started to blister/swell and furniture, carpet, personal property was damaged throughout the unit.
  - Subsequent to inspecting the property, Universal completed an estimate stating that the replacement cost value for the loss was $12,960.80, which after depreciation, reflected an ACV of $9,158.43 before the $1,000 deductible for a net claim value of $8,158.43.
  - The estimate did include any payment for damage to personal property; Two (2) photos submitted by the FA contained the following notation: personal property damaged by wind driven rain – no coverage under the policy.
  - Universal issued the net claim payment and sent a coverage determination letter regarding the same and that the recoverable depreciation would be up to $3,802.37.
  - Prior to filing suit, the Insured contacted Universal and informed them that "he had a proposal which was higher than the Universal estimate". Universal requested a copy of the proposal but never received one. Additionally, Universal's CR testified that the Insureds never requested that Universal pay a specific amount nor did the Insured submit an inventory claim form for personal property. As such, for Universal to pay any additional amounts in this case would require it to guess the amount that the Insured claimed as additional damages.
  - Insured's attorney ROR did not provide Universal with a supplemental claim or a damage estimate either; Instead, it only requested various documents related to the claim. As such, no documents were provided in response to the ROR letter.

Goldberg v. Universal Property and Casualty Company; 2020 Fla. App. LEXIS 12720. (Cont.)

- **Trial Court**
  - Insured filed Complaint for breach of contract, alleging that Universal "underpaid" the claim" and "materially breached the Policy" by failing to pay all of the benefits due and owing.
  - As an affirmative defense, Universal asserted that the Insured never filed a supplemental claim and never provided Universal with a separate estimate prior to filing suit.
  - Universal filed MSJ on grounds that Insured never submitted an estimate or a supplemental claim prior to filing suit.
  - Insured filed response contending he was not required to submit a supplemental claim because Universal breached the policy by failing to issue payment for at least the ACV of the loss and by failing to issue payment for the loss to personal property.
  - Trial court granted Universal's MSJ and held that the "[p]laintiff failed to submit a supplemental claim as required by the terms and conditions of the policy and Florida law which resulted in prejudice to the insurer.
- **Appellate Court**
  - Appellate court found that the threshold issue is whether the Insured was required to submit a supplemental claim before filing suit for additional payment and determined that, based on the language of the Policy, the Insured was required to file a supplemental claim setting forth the damages he sought in excess of what the insurance company had already paid *(under the provisions of the policy this only relates to a hurricane or windstorm claim).*
  - Appellate court found that competing estimate by the Insured's PA or contractor, as submitted by the Insured, would be sufficient to open a "supplemental claim"; However, as the Insured did not submit an estimate, no supplemental claim was opened.
  - With respect to the Insured's argument that Universal breached the contract which excused the requirement that the Insured submit a supplemental claim, the appellate court found that Universal was *not* in breach of the policy as it paid the ACV for the loss.
  - The Appellate Court agreed that while an insurer's unilateral determination of the cash value of a loss does not entitle it to summary judgment in the face of a competing estimate, the insurer should not be deemed to have breached the contract where it accepted coverage and paid the only estimate it received of the ACV (here the FA estimate).

Goldberg v. Universal Property and Casualty Company; 2020 Fla. App. LEXIS 12720. (Cont.)

- **Appellate Court, Cont.**
  - In reliance on *Keel v. Independent Life & Acci. Ins. Co.*, 99 So. 2d 225, 227 (Fla. 1957) (where an insurer's denial of liability is based upon ground other than failure to furnish a notice or proof of loss, such denial is tantamount to a waiver of the policy requirements), the appellate court held that Universal's "failure" to pay for any personal property damage was effectively a denial of that loss which waives Universal's right to insist upon the Insureds' compliance with the policy provisions, such as submitting supplemental claims and for this reason the trial court erred in granting SJ on the personal property loss on the *sole* ground that the Insured did not submit a supplemental claim.

Vazquez v. Citizens Prop. Ins. Corp.; 304 So. 3d 1280 (Fla. 3d DCA 2020).

- **Facts**
  - Insured suffered water damage to 12 ceramic tiles and one kitchen cabinet and the policy required citizens to pay the ACV of the loss; Citizens paid $33,759.52.
  - Prior to commencing repairs, the Insured hired a loss consultant to estimate the damages; The estimate included costs for matching the continuous tile floor throughout her house and all of her kitchen cabinets.
  - Insured filed suit against Citizens for breach of contract and claimed that Citizens failed to pay the ACV because she was entitled to recover $84,542.93, including matching costs; insured also filed a dec action requesting a declaration that "payment by Citizens of an amount which it claims to be satisfaction of the value of the loss does not create a legal presumption that the amount paid is the ACV of a covered loss."
  - Prior to trial, Insured filed affidavit from her loss consultant who planned on testifying that $70,000 of the estimate was for matching costs.
- **Trial Court**
  - Citizens file a Motion in Limine asking the court to preclude evidence and testimony related to matching damages from the trial and limit the evidence on damages to direct physical loss given that the Insured's Complaint was for ACV.
  - At the hearing on the Motion in Limine, the Insured asserted that the ACV includes costs for matching; Trial Court granted the Motion in LImine finding that, pursuant to the policy and law, Citizens was initially required to pay the ACV of the Property that sustained the direct physical loss and that it did not have an obligation to pay any remaining amounts beyond the ACV, including matching costs, because the Insured had not yet begun making repairs.
  - The Court further noted that the Insured had chosen to bring suit based on ACV and ruled that, as a matter of law, ACV does not include matching and relied upon the holding in Ocean View Towers Ass'n, Inc. v. QBE Insurance Corp. to find that matching is not a direct physical loss. However, the Court articulated that the insured could still seek to recover matching costs.
  - The Court limited the evidence to the ACV of the physical damage and excluded evidence of undamaged items.

Vazquez v. Citizens Prop. Ins. Corp.; 304 So. 3d 1280 (Fla. 3d DCA 2020). (Cont.)

- **Trial Court, Cont.**
  - Trial Court concluded that Citizens substantially overpaid the ACV value based on the order on the Motion in Limine and the loss consultant's affidavit and that the Insured could nothing by the action
  - Insured moved for a directed verdict on her declaratory action and based her argument on Servando Vazquez v. Southern Fidelity Property & Casualty, Inc. for the assertion that Servando requires payment of actual cash value – not merely the insurance company's estimate of ACV
  - Trial Court found that the payment made by Citizens in an amount which it claims to be satisfaction of the value of the loss does not create a legal presumption that the amount paid is the ACV of the covered loss.
- **Appellate Court**
  - Court found that the plain language of the policy explicitly covers loss that is "direct loss to property … only if that loss is a physical loss; Court has previously interpreted "loss" to mean "the diminution of value of something" (i.e. the subject property), and "direct" and "physical" modify loss and impose the requirement that the damage be "actual"

Vazquez v. Citizens Prop. Ins. Corp.; 304 So. 3d 1280 (Fla. 3d DCA 2020). (Cont.)

- **Appellate Court, Cont.**
  - Insured argued that ACV includes all costs reasonably necessary to do to the repairs minus depreciation and relied upon the holding in Trinidad for the assertion that the Fl. Supreme Court defined ACV as the "fair market value" or "replacement cost minus normal depreciation"
  - Court found that Insureds argument ignores the plain text of §627.7011(3)(a), which was echoed in the Insureds
  - The statute, as amended, omitted the phrase "whether or not the insured replaces or repairs the dwelling or property" and now reads as follows: The insurer shall pay any remaining amounts necessary to perform such repairs as work is performed and expenses are incurred.
  - The Court found that the Insured's interpretation plainly disregards the plain language of the matching statute which clearly defers to the policy as controlling. As such, the Court held that the plain language of the policy and statute clearly require the insurer to pay any remaining amounts *as the repairs are performed*.

Menendez v. Progressive Express Ins. Co.; 35 So. 3d 873 (Fla. 2010).

- **Facts**
  - Insured was injured in an auto accident while travelling to work and was covered by a PIP policy issued by Progressive.
  - Filed suit for overdue PIP benefits.
- **Trial Court**
  - Issue that is germane to 1st Party Property that was debated at trial is whether the statutory presuit notice was required.
  - Ultimately, trial court entered in favor of the Insureds, which was reversed at the appellate court level.
  - The only matter that remained to be litigated is whether the pre-suit correspondence from Progressive to the Insureds constituted a denial of the claim, which would obviate the need to comply with the pre-suit notice provisions of the PIP statute.
- **Florida Supreme Court**
  - The dispositive issue before the court is whether the applicable statute is able to be applied retroactively to an insurance policy issued prior to the enactment of the statute. (This is where the crossover to 1st party property matters exists).
  - In analyzing this question the Supreme Court looked at the date the insurance policy was issued and not at the date of the accident or when suit was filed (i.e. DOL) because "the statute in effect at the time an insurance contract is executed governs substantive issues arising in connection with that contract." Hassen v. State Farm Mut. Auto. Ins. Co., 674 So. 2d 106, 108 (Fla. 1996).
  - Court applied a 2-prong test to determine if the statute should be applied retroactively: (1) Court must ascertain whether legislature intended for the statute to apply retroactively; and (2) if such an intent was clearly expressed, the Court must determine whether retroactive application would violate any constitutional principles
  - Here, the Court concluded that the legislature intended for the statutory pre-suit notice to be applied retroactively; however, even where the legislature expressly states that a statute will have a retroactive application, this court will reject such an application if the statute impairs a vested right, creates a new obligation or imposes a new penalty. As such, the central focus of the inquiry is whether retroactive application of the statute "attached new legal consequences to events completed before its enactment".

Menendez v. Progressive Express Ins. Co.; 35 So. 3d 873 (Fla. 2010). (Cont.)

- **Florida Supreme Court, Cont.**
  - Court found that the 3d DCA improperly concluded that the statutory presuit notice provision could apply retroactively to the existing policy and claim for benefits in this case. Court concluded that the most problematic provisions of the statute are those which impose a penalty, implicate atty. fees, grant additional time pay benefits and delay the insured's right to institute a cause of action.
  - The Court further noted that allowing the statute, as amended, to be applied retroactively, the insurer would be able to avoid a substantive change to the statute in effect at the time the policy was issued (i.e. the amendment allows the employer 30 rather than 14 days in which to provide benefits before being responsible for atty. fees).
  - Lastly, the Court held that when viewed as a whole, the statute is a substantive statute and that the pre-suit notice is not "procedural" as the insured must now take additional steps beyond complying with the statute including the preparation and provision of a notice of intent to litigate, which requires the inclusion of additional information that the insured may not have access to and which may not be sent until the claim is considered overdue.

Beverly Edwards v. Safepoint Insurance Company; 318 So. 3d 13 (Fla. 4th DCA 2021).

- **Facts**
  - Insured suffered a property loss due to an auto accident that damaged her fences, sprinkler and septic tank; Insured hired PA the day after the accident.
  - Insurance policy was issued to Insured 1 week prior to DOL and provided that the Insured was required to give prompt notice of the loss and to provide a SPOL w/in 60 days after Safepoint's request.
  - Insured, through her PA, reported the claim to Safepoint approximately two (2) weeks after the DOL and after the repairs to the sprinkler and septic tank had been made.
  - One week later Safepoint emailed the PA and requested the SPOL.
  - Safepoint subsequently sent ROR to Insured and requested SPOL.
  - 6 weeks after their request to the PA, the PA sent Safepoint documents and a notation that the SPOL was "being completed".
  - Safepoint thereafter requested receipts for repair of the septic tank and sprinkler which Safepoint indicated were repaired prior to its inspection of the property.
  - Several more requests for the receipts for the repairs to the septic tank and sprinkler were made by Safepoint; Further, Safepoint stated that it could not resolve coverage without these, however, these multiple requests did not include a request for the SPOL.

Beverly Edwards v. Safepoint Insurance Company; 318 So. 3d 13 (Fla. 4th DCA 2021). (Cont.)

- **Facts, Cont.**
  - PA thereafter emailed Safepoint asserting that the estimate was still not ready, that the sprinkler and septic tank were repaired in accordance with the Insureds' "duty to remediate damages before they get worse" and that the Insured was demanded payment of the "undisputed amount of insurance proceeds."
  - Safepoint remitted the sum of $1,176.23 to the Insured which represented "payment for the dwelling damage" after subtracting the deductible and non-recoverable depreciation. The letter stated that "this payment does not necessarily constitute a full and final settlement of your claim for damages" and that "the payment is based upon our inspection." Additionally, the letter provided that that Insured "may submit supplemental claims for any additional damages discovered during the covered reconstruction and repairs of the above-mentioned property." Finally, the letter provided that Safepoint previously asked for "paid receipts to the sprinkler and septic tank" and that "those items have not been received." The letter did not discuss the SPOL nor did it state that the claim was being denied due to the insureds' failure to comply with any post-loss obligation.
  - Thereafter, the Insured, via the PA, made a supplemental request for payment seeking an additional $12,061.10 and included an estimate and the sprinkler repair invoice.
  - Insured sued after Safepoint failed to respond to the supplemental payment w/in 90 days.

Beverly Edwards v. Safepoint Insurance Company; 318 So. 3d 13 (Fla. 4th DCA 2021). (Cont.)

- **Trial Court**
  - Insured argued that Safepoint did not pay for the entire loss and had "denied coverage to portions of the loss".
  - Safepoint moved for summary judgment on the ground that the Insured failed to satisfy her post-loss obligations – one of which was the submission of the SPOL.
  - Insured filed a response arguing that: (1) Safepoint admitted liability in its coverage determination letter and thus waived the right to receive the SPOL; (2) Safepoint confirmed that it was not prejudiced by the Insureds' alleged failure to comply with any post-loss obligations because Safepoint asserted in its correspondence that "it had all the info. it needed to provide it with a basis for granting coverage; and (3) a genuine issued of material fact existed as to whether the Insured sufficiently complied with the post-loss obligations under the policy.
  - Insureds counsel admitted that no SPOL was submitted but that Safepoint waived the requirement by admitting liability in an unagreed amount.
  - Based solely on the Insureds' failure to submit a SPOL trial court granted SJ in favor of Insurer pursuant to Rodrigo v. State Farm Ins. Co., 144 So. 3d 690 (Fla. 4th DCA 2014) (failure to provide SPOL is a material breach that rendered the policy ineffective regardless of prejudice).
- **Appellate Court**
  - Court found that here, there was record evidence of a "total failure" by the insured to comply with the SPOL requirement – they did not cooperate to "some degree" with the requirement
  - The Court noted that the question is not whether, in a general sense, the insured cooperated to some degree with the investigation, but whether the insured cooperated to some degree with the proof of loss condition – the Court found it did not and then determined Safepoint was not required to demonstrated that it was prejudiced by the Insured's failure to comply under Rodrigo

Kidwell Group, LLC v. Geovera Specialty Ins. Co.; 328 So. 3d 994 (Fla. 4th DCA 2021).

- **Facts**
  - Assignee of Insured appealed from final order in granting motion to dismiss the assignee's breach of contract claim against insurer
  - County Court granted MTD b/c only the wife insured, and not also the husband insured, signed the AoB, as required by the policy's provision which required that an AoB be executed by all insureds and all mortgagees named in the Policy.
- **Appellate Court**
  - Court affirmed county court ruling and reaffirmed Restoration 1 of Port Saint Lucie v. Ark Royal Insurance Co., 255 So. 3d 344 (Fla. 4th DCA 2018).
  - Court articulated that Restoration 1 held that such a provision did not violate Florida law because the provision did not require the insurer to consent to the benefits assignment.
  - It is well settled that the provision in a policy relative to the consent of the insurer to the transfer of an interest therein does not apply to an assignment after loss - W. Fla. Grocery Co. v. Teutonia Fire Ins. Co., 74 Fla. 220, 77 So. 209, 210-11 (Fla. 1917).
  - Court recognized the conflict with Security First Insurance Co. v. Florida Office of Insurance Regulation where the 5th DCA interpreted W. Fla. Grocer to mean that any restriction on an AoB was unenforceable, even those restrictions not limited to requiring insurer consent.
  - As such, the 4th DCA certified conflict.

Kidwell Group, LLC v. Geovera Specialty Ins. Co.; 328 So. 3d 994 (Fla. 4th DCA 2021). (Cont.)

- **Appellate Court, Cont.**
  - Court also found that the county court certified the following question of great public importance: "[w]hether an assignment of benefits executed prior to July 1, 2019 requires the signature of all named insureds in order to be enforceable against a defendant in a breach of contract lawsuit for property damage."
  - The assignee argues that in 2019, the Legislature enacted §627.7153, Fla. Stat. which expressly permits a policy issued or renewed on or after July 1, 2019, to restrict, in whole or in party an insureds rights to execute and AoB when certain enumerated conditions (not at issue here) are met. As such, the assignee argues the enactment of the statue create a question as to whether policies issued or renewed before July 1, 2019 were prohibited from restricting in whole or in part an insureds right to executed an AoB.
  - Court found the Restoration 1 holding stands firm on the ground upon which the holding was based as should judicial review of any policy issued or renewed after July 1, 2019.
  - The Court noted that because it concluded that the new legislation addressed on a going-forward basis the issue at bar, it exercised discretion to discharge jurisdiction and declined to answer the certified question as it no longer saw the need to do so.

Perez v. Southern Fidelity Insurance Company; Broward County Circuit Court; CACE-21-003148.

- **Facts**
  - Insured suffered property damage due to Hurricane Irma
  - Southern Fidelity investigated the claim and accepted full coverage for the loss; However, the amount of damages were found to be under the hurricane deductible
  - Following Southern Fidelity's decision, Plaintiff did not submit a competing estimate or supplemental claim until more than three (3) years after the passage of Hurricane Irma
  - Under the Policy, the Insured was required to submit a supplemental claim or reopen the claim "within three (3) years after the hurricane first made landfall or the windstorm caused the covered damage." Further, § 627.70132, Fla. Stat. provides that a "supplemental claim" or "reopened claim" (meaning any additional claim for recovery from the insurer for losses form the same hurricane or windstorm which the insurer has previously adjusted pursuant to the initial claim)
  - Southern Fidelity send a letter to the Insured and the Insureds' PA (who made the claim) acknowledging receipt of the estimate and advised that the Plaintiff was barred for making a supplemental claim three (3) years after provide notice of the passage of Hurricane Irma under the policy

Perez v. Southern Fidelity Insurance Company; Broward County Circuit Court; CACE-21-003148.

- **Insured's Motion for SJ**
  - Southern Fidelity argues that the Plaintiff's failure to timely provide notice of her supplemental or reopened claim prejudiced it and that the language of the policy and §627.70132, Fla. Stat. unambiguously provides that the Insured is barred from submitting a supplemental/reopened claim more than three (3) years after the hurricane first made landfall or the windstorm caused the covered damage.
  - Further, Southern Fidelity argues that the Policy expressly defines a supplemental or reopened claim as "any additional claim for recovery for losses from the same hurricane or windstorm which Southern Fidelity previously adjusted pursuant to the initial claim."
  - Under the policy, if the Insured sought additional funds for repairs, relating to Hurricane Irma, the Insured was required to submit a supplemental or reopened claim within the three year window
  - Southern Fidelity relies on Goldberg for the premise that an insured needs to submit a competing estimate or other documentation for its supplemental claim and that a failure to do so prejudices the insurer.
  - Court found that the Insured did not provide notice of the supplemental or reopened claim to Southern Fidelity until more than three (3) years after Hurricane Irma made landfall, and the Plaintiff's failure to provide such notice prejudiced Southern Fidelity; As such, the Court found that the Plaintiff's claim is barred by the limitations period set forth in §627.70132, Fla. Stat.

People's Trust Ins. Co. v. Garcia; 263 So. 3d 231 (Fla. 3d DCA 2019).

- **Facts**
  - Insurance policy on property included a Preferred Contractor Endorsement (the "Endorsement"). Under the Endorsement, the Insured agreed that in the event of a covered loss PTIC may, at its option, repair the property.
  - Endorsement also provided that if PTIC elected to repair the property and if the "[insured] and PTICS fail to agree on the amount of loss, which includes the scope of repairs, either may demand an appraisal as to the amount of loss and the scope of repairs." The appraisal provision provided that once the appraisers set the amount of loss and scope of repairs "the scope of repairs shall establish the work to be performed and completed by Rapid Response Team, LLC"
  - Property suffered water damage due to a roof leak
  - In its coverage determination letter, PTIC provided that while "[t]here is coverage under the policy for the loss as a whole, the scope of damages covered by the policy includes only the interior damages but does include the roof." The letter further provided that PTIC's investigation "revealed that the roof leak stemmed from age-related wear and tear and deterioration; general mechanical breakdown or latent defect; and/or faulty, inadequate or defective maintenance of the roofing system – none of which are covered causes of loss." As such, PTIC concluded that "in [its] opinion the scope of covered damages would not include the roofing system because those damages were caused by uncovered or excluded causes, but would provide coverage for resulting ensuing damages to the interior of the property." PTIC further provided that if the Insured was not in agreement with the foregoing, then "the question of whether the scope of repairs should include the roof could be resolved in appraisal"

People's Trust Ins. Co. v. Garcia; 263 So. 3d 231 (Fla. 3d DCA 2019). (Cont.)

- **Facts, Cont.**
  - PTIC's correspondence also indicated that it elected to repair the property "to its pre-loss condition by making repairs to all covered damages, once there is a determination of what those damages are, either by agreement or by submitting the matter to an appraisal panel as set forth in the policy."
  - SPOL was submitted by the Insured and while PTIC acknowledged receipt of the SPOL it informed the Insured that it disagreed with the SPOL as it was "predicated upon a repair estimate which included repairs the fall outside the scope of the loss".
  - PTIC demanded appraisal "of the amount of loss and scope of repairs in accordance with" the Endorsement.
- **Trial Court**
  - Insured file complaint for breach of contract and declaratory judgment
  - PTIC filed Motion to Dismiss count for declaratory judgment and a Motion to Compel Appraisal and stay the lawsuit
  - Trial Court denied PTIC's Motion to Dismiss and granted its Motion to Compel and Stay; Counsel for the Insured never appeared
  - Insured moved for reconsideration and argued that her counsel's failure to appear at the hearing was due to a clerical error – Trial court granted this Motion, vacated that order and denied PTIC's Motion to Compel stating that "the Court finds the issue is one of coverage, not amount-of-loss."

People's Trust Ins. Co. v. Garcia; 263 So. 3d 231 (Fla. 3d DCA 2019). (Cont.)

- **Appellate Court**
  - On appeal PTIC argued that the trial court erred in refusing to compel appraisal.
  - This Court found that PTIC admitted coverage to the property as a result of a roof leak and that the damage to the property included both damage to the interior of the property as well as damage to the roofing system. The question of whether the damage to the roof was caused by wear and tear and deterioration, general mechanical breakdown or latent, defect, and/or faulty, inadequate or defective maintenance (all of which are excluded causes under the Policy) is an amount of loss question for the appraisal panel, not a coverage question that can be decided by the trial court.
  - The Insured creatively argued that because she suffered two losses – the original loss when the roof was damaged and the subsequent ensuing loss to the interior – the Gonzalez rule does not apply. Specifically, the Insured argued that the rule that "causation is a coverage question for the court when an insurer wholly denies that there is a covered loss and an amount-of-loss question for the appraisal panel when an insurer admits that there is a covered loss, the amount of which is disputed" does not apply where there are multiple separate losses and the insurer acknowledges only one.

People's Trust Ins. Co. v. Garcia; 263 So. 3d 231 (Fla. 3d DCA 2019). (Cont.)

- **Appellate Court, Cont.**
  - The Fourth DCA has held that the issue of causation is to bet determined by appraisal in a factually analogous scenario where the insurer agreed to repair ensuing damages to the interior of a home (People's Trust Insurance Co. v. Tracey, 251 so. 3d 931 (Fla. 4th DCA 2018)). There, the insureds filed a claim with their insurer for damage caused by wind from a tornado to the roof and interior of their home. PTIC issued a letter to the insureds, virtually identical to the letter sent to the Insured's in this case. The Insureds did not agree with the conclusion and submitted a SPOL and PTIC demanded an appraisal to determine whether the roof damage was caused by wind (a covered loss) or wear and tear (an uncovered loss). The trial court determined that the matter could not be submitted to appraisal "because the insurer made a 'premeditation' that the roof was not covered." The 4th DCA found that because PTIC "admitted coverage for the interior damage, but declined to repair the roof … PTIC did not "wholly deny" coverage" and reversed/remanded to compel appraisal. Court noted that "[t]here is only one claim, and it includes both the roof and the interior of the same home"
  - Appellate Court in this case found the analysis in Tracey to be persuasive and likewise concluded that the issue is one for the appraisal process.

QUESTIONS, QUERIES, QUIPS, QUANDRIES OR CRITICISMS?