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IN THE SUPREME COURT OF FLORIDA

CASE NO.: SC2024-0025
L.T. CASE NOS.: 6D2023-0296
112021CA0020480001XX

UNIVERSAL PROPERTY &
CASUALTY INSURANCE COMPANY,

Petitioner,

v.

REBECCA HUGHES,

Respondent.
_____/

AMICUS CURIAE BRIEF OF FLORIDA JUSTICE REFORM INSTITUTE, AMERICAN PROPERTY CASUALTY INSURANCE ASSOCIATION, NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES, AND PERSONAL INSURANCE FEDERATION OF FLORIDA, IN SUPPORT OF PETITIONER

William W. Large, Esq.
Florida Bar No.: 981273
Florida Justice Reform Institute
210 S. Monroe Street
Tallahassee, FL 32301
Telephone: (850) 222-0170
william@fljustice.org
Counsel for FJRI

Kara Rockenbach Link, Esq.
Florida Bar No.: 0044903
Daniel M. Schwarz, Esq.
Florida Bar No.: 92537
Link & Rockenbach, PA
1555 Palm Beach Lakes Blvd.,
Suite 930
West Palm Beach, FL 33401
Telephone: (561) 847-4408
kara@linkrocklaw.com
daniel@linkrocklaw.com
Counsel for Amici

Michael W. Carlson, Esq.
Florida Bar No.: 56235
Personal Insurance Federation
of Florida
215 S. Monroe Street, Suite 835
Tallahassee, FL 32301-1867
Telephone: 850-597-7425
michael.carlson@piff.net
Counsel for PIFF

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IDENTITIES AND INTERESTS OF AMICI CURIAE

The Florida Justice Reform Institute ("FJRI") is a non-profit organization dedicated to reform of Florida's civil justice system through the restoration of fairness, equality, predictability, and personal responsibility in that system.

American Property Casualty Insurance Association ("APCIA") is a leading national trade association for home, automobile, and business insurers dedicated to protecting private competition for the benefit of both consumers and insurers. APCIA's member companies represent 65% of the U.S. property-casualty insurance market, including over 55% of Florida's personal lines insurance market.

National Association of Mutual Insurance Companies ("NAMIC") consists of nearly 1,500 member companies, including seven of the top ten U.S. property-casualty insurers. NAMIC supports local, regional, and national insurers, and its member companies represent 68% of American homeowners. NAMIC works to promote solutions that jointly benefit its member companies and policyholders.

Personal Insurance Federation of Florida ("PIFF") is a leading voice for the personal lines property and casualty insurance industry in Florida, representing national carriers and their subsidiaries,

including many of Florida's top writers of multiperil homeowners' insurance. PIFF advocates for a healthy and competitive insurance marketplace for the benefit of Florida consumers.

Amici's[1] interests are aligned with Petitioner's. Amici believe this Court's approval of the decisions of the Third and Fourth District Courts of Appeal in *Cole v. Universal Property & Casualty Insurance Company*, 363 So. 3d 1089 (Fla. 4th DCA 2023), and *Cantens v. Certain Underwriters at Lloyd's London*, 49 Fla. L. Weekly D360 (Fla. 3d DCA Feb. 14, 2024), will help support stability in the property casualty insurance market, alleviate pressures on affordability and insurability, reduce litigation, and help Florida's property insurance market return to a thriving condition.

The orderly, equitable administration of justice and availability and affordability of property insurance in Florida are squarely implicated by this appeal.

Section 627.70152, Florida Statutes (2021), was intended to provide for early resolution of first-party insurance claims before

[1] FJRI, APCIA, NAMIC, and PIFF will be collectively referred to as "Amici." The Appendix to this brief is cited as "A:[page number]."

resort to a court system facing—in 2021—an already-overburdened caseload due to COVID-19. The statute also was enacted in response to a crisis of first-party insurance claims, as evidenced by reports of "increasingly severe underwriting losses" caused by "greater frequency of secondary perils (severe thunderstorms, wind, hail), higher reinsurance costs, [and] escalating litigation costs[.]" AM Best, *Troubled Florida Property Market Participants Under Immense Pressure* (May 2, 2022) (A:7). In turn, insurers "responded with rate increases, underwriting adjustments, and targeted non-renewals while avoiding more problematic areas of the state." *Id.*

To effectuate legislative intent and allow the pre-suit notice requirement to mitigate the insurance crisis, as intended, and restore balance between policyholders and insurers, Amici request this Court to approve *Cole* and *Cantens*, allowing section 627.70152 to be applied to all lawsuits filed on or after the statute's effective date of July 1, 2021. Applying the statute as written makes the plain text supreme, adheres to legislative intent, and benefits *both* policyholders and insurers. Conversely, the Court should disapprove the Sixth District Court of Appeal's decision in *Hughes v. Universal Property & Casualty Insurance Company*, 374 So. 3d 900 (Fla. 6th

DCA 2023), which failed to apply the supremacy-of-text principle, relied on the inapposite personal injury protection ("PIP") context, and erroneously equated *de minimis* delay in an insured's ability to file suit (if necessary at all), after a coverage decision is already made, with affecting a "substantive" right. *Id.* at 907-09.

Significantly, the statute lessened—and continues to lessen—the burden on an overburdened, post-COVID-19 court system by reducing the number of lawsuits based on low-dollar property insurance claims that should be resolved without litigation, allowing policyholders to repair their homes earlier and avoiding exposing insurers to frequently inflated and unsupportable attorneys' fees claims. Even more importantly, the statute has helped—as designed—the insurance industry emerge from a crisis.

HISTORICAL BACKGROUND

Before the passage of Senate Bill 76 which, on July 1, 2021, Governor DeSantis signed into law as chapter 2021-77, Laws of Florida, the outlook for Florida's property insurance market was bleak. According to Florida's Office of Insurance Regulation ("OIR"):

> The property market in Florida is stressed. As a result of significant adverse losses, property insurers in Florida are reducing their footprint in

> certain geographic areas of the state or ceasing to write new business in Florida altogether. As a result, the number of applications for coverage with Citizens is increasing. Property insurance premiums for policyholders are increasing and coverage is being reduced. Insurers are facing significant financial hardship due to negative underwriting results, adverse loss reserve development, and "social inflation" factors such as **excessive litigation** and door-to-door solicitation. A series of recent landfalling major tropical events including Hurricane Michael and Irma have also negatively impacted the financial condition of domestic property insurers.

OIR, *Report to Fla. House Commerce Committee* (Feb. 24, 2021) (emphasis added) (footnotes omitted) (A:13).

OIR amassed data demonstrating, between 2016 and 2021, the disproportionate percentages of nationwide homeowners' insurance claims opened in Florida, with those that resulted in suit:

Year	Percent of Nationwide Homeowners' Claims Opened in Florida	Percent of Nationwide Homeowners' Suits Opened in Florida
2016	7.75%	64.43%
2017	16.46%	68.07%
2018	11.85%	79.91%
2019	8.16%	76.45%
2020	8.81%	79.16%
2021	6.91%	76.00%

OIR, *Property Insurance Stability Report*, at 4 (July 1, 2023) (A:118).

Moreover, the total number of lawsuits more than doubled from 25,343 in 2016 to 61,862 in 2020. OIR, *Report to Fla. House Commerce Committee* (Feb. 24, 2021) (A:16). Of these, the number of non-weather water claims with litigation nearly doubled the number closed without it. The Florida Senate, *Bill Analysis & Fiscal Impact Statement*, Committee on Judiciary (Mar. 11, 2021).

By 2020, the average cost to an insurer of each litigated claim was $54,000. (A:17). Consequently, "OIR saw a dramatic increase in the number of rate filings approved with a rate [premium] increase of more than 10%." (A:22). Nevertheless, Florida property insurers were on track to double their losses from 2019 to 2020. (A:86). By the third quarter of 2020, net underwriting losses exceeded $1 billion. (A:87, 125, 151, 164). OIR specifically linked "the increased severity of claims involving litigation" to "adverse loss reserve development, leading to high rate filings." Fla. Senate (A:89). Specifically, OIR analyzed data that revealed "[t]he percentage of claims filed with legal representation at the first notice of loss increased from 10.3 percent in 2017 to 43.1 percent in 2018, 63.3 percent and 64.5 percent in years 2019 and 2020, respectively." (A:90).

Cognizant of a pre-suit notice requirement that Texas had adopted in 2017, OIR suggested to the Legislature that "[a]ffording an insurance company a meaningful opportunity to address a consumer's concerns regarding a claim prior to a lawsuit provides another avenue for resolution, potentially eliminating costly litigation." (A:23).

Agreeing, the Legislature passed chapter 2021-77, Laws of Florida, creating section 627.70152, Florida Statutes, with an effective date of July 1, 2021. Significantly, subsection (1) provided:

> (1) Application.—This section applies exclusively to all suits not brought by an assignee arising under a residential or commercial property insurance policy, including a residential or commercial property insurance policy issued by an eligible surplus lines insurer.

§ 627.70152(1), Fla. Stat. (2021).

Subsection (3) provided, "[a]s a condition precedent to filing a suit under a property insurance policy, a claimant must provide the department [of Financial Services] with written notice of intent to initiate litigation" at least 10 business days before filing suit under the policy. § 627.70152(3), Fla. Stat. (2021). The statute then listed an insurer's duties related to investigating, evaluating, and timely

responding to the notice of intent, by which the insurer could continue to deny coverage, accept coverage, assert a right to reinspect the property, or in certain cases, make a settlement offer or require the insured to participate in alternative dispute resolution. § 627.70152(4), Fla. Stat. (2021).

After its passage, Insurance Commissioner David Altmaier referred to the law as a "meaningful insurance reform[] that help[s] protect all Floridians by promoting the long-term stability of Florida's insurance market and keeping our market competitive." Senator Jim Boyd remarked that, since 2013, Florida insurers had paid out $15 billion in claims, with 71% going to insureds' attorney's fees, 21% to defense costs, and only 8% going to policyholders, expressing hope that the new law would result in a "downward impact on those rates." Florida Governor's Office, *Governor DeSantis Signs Legislation to Continue Insurance Reform in Florida* (June 11, 2021) (A:111).

Promisingly, OIR's recent data indicates that section 627.70152's notice of intent requirement is working. The first month the law went into effect, July 2021, 1,894 notices of intent to initiate litigation were filed, peaking at 8,637 notices of intent filed in February 2023. OIR, *Property Insurance Stability Report*, at 8.

(A:121). Data for the most recent month, June 2024, shows that 5,141 were filed. OIR, *Property Insurance Stability Report* (2024) (A:144). Meanwhile, in April 2024, OIR reported that eight new insurers were approved to enter Florida's insurance market, policies are increasingly being assumed from Citizens Property Insurance Corporation, net underwriting losses are decreasing, and "the market continues to stabilize." (A:164).

Further, in 2023, insurers reported 658,512 closed claims, and only 64,351 litigated claims (less than 10%). (A:146). Across various claim categories, the percentage of non-litigated claims far exceeds the percentage of litigated claims:

Claims Closed During Calendar Year 2023				
Peril	**Closed Claims**	**Litigated**	**Non-Litigated**	**Unknown**
Accidental Discharge; Overflow of Water; Steam	89,641	12.55%	76.96%	10.48%
All Other Perils	96,111	6.46%	83.38%	10.16%
Falling Object	3,370	7.33%	87.95%	4.72%
Fire or Lightning	13,964	2.54%	82.98%	14.48%
Hurricane	249,294	7.40%	88.33%	4.27%
Other Water	69,797	13.25%	81.25%	5.50%
Sinkhole	277	16.01%	74.02%	9.96%
Windstorm or Hailstorm (other than Hurricane)	136,058	13.42%	71.89%	14.69%

(A:147). While data continues to be collected, and more work is needed, there are good reasons to believe that the pre-suit procedural mechanisms outlined in sections 627.70152(3) and (4) are resulting in insurers receiving appropriate time and notice to evaluate claims, policyholders obtaining funds to repair their homes faster, and reducing the number of filed property insurance lawsuits.

SUMMARY OF ARGUMENT

Words matter. This truism is uniquely compelling here because the Florida Legislature wrote a statute with abundant clarity. This clarity as to the law's scope provides stability for property insurers and their policyholders that have endured years of litigation fatigue caused by a rush to the courthouse. This Court must apply the law as written—to all *suits filed* on or after the law's effective date, July 1, 2021—and allow the ensuing benefit of early pre-suit resolution to take place. Any other application would render the statute's plain words meaningless and run afoul of the supremacy-of-text principle.

The Legislature enacted section 627.70152 to provide immediate relief from the deluge of first-party property insurance lawsuits that congested the courts and led to problems in the market with predicting reserves, insurers leaving the state, and increasing

premiums while reducing coverage. The statute mandates pre-suit notice which allows the insurer to focus on its coverage and/or payment decision *before* engaging in costly litigation to the insurer and policyholders are delayed in repairing their homes. The Legislature knows how to enact effective dates and uses precise language to trigger a law's applicability. Deference to a statute's legislatively determined effective date recognizes that the Legislature is uniquely equipped through committee work to assess legislation's economic impact.

If necessary, this Court's resort to legislative history provides the compelling legislative intent consistent with the statute's plain words. Only one date in the life of an insurance claim was referenced: suit filed date. Draft language that would have excluded policies issued or renewed before the law's effective date was omitted from the law.

Finally, the conflict issue has been presented to this Court *without* consideration by any district court of the then-new fee calculation of section 627.70152(8), Florida Statutes (2021). Regarding whether *delay* in fee recovery is substantive, there was never a right to attorneys' fees at policy inception, absent recovery.

As such, *Cole* and *Cantens* correctly held that the statute merely affects the means or methods by which substantive rights under an insurance contract are pursued. This Court's concerns in *Menendez*—largely flowing from PIP as a system based entirely on statute, designed to be "swift and virtually automatic"—are absent here.

ARGUMENT

I. THE STATUTE'S PLAIN LANGUAGE ANCHORS ITS APPLICABILITY TO "SUITS" WHICH REQUIRES COURTS TO APPLY THE PRE-SUIT NOTICE PROVISION TO SUITS FILED ON AND AFTER JULY 1, 2021

A court's determination of a statute's meaning begins with its plain language. *Halifax Hosp. Med. Ctr. v. State*, 278 So. 3d 545, 547 (Fla. 2019). If clear, the statute is given its plain meaning, and inquiry ends. *Id.*; *MRI Assocs. of Tampa, Inc. v. State Farm Mut. Auto. Ins. Co.*, 334 So. 3d 577, 583 (Fla. 2021) (concluding that "the meaning of the governing text is clear beyond any doubt"); *DMB Inv. Tr. v. Islamorada, Vill. of Islands*, 225 So. 3d 312, 317 (Fla. 3d DCA 2017) (if an act is "clear, certain and unambiguous, the courts have only the simple and obvious duty to enforce the law according to its terms").

This Court has recently held:

> In interpreting the statute, we follow the "supremacy-of-text principle"—namely, the principle that "[t]he words of a governing text are of paramount concern, and what they convey, in their context, is what the text means." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 56 (2012). We also adhere to Justice Joseph Story's view that "every word employed in [a legal text] is to be expounded in its plain, obvious, and common sense, unless the context furnishes some ground to control, qualify, or enlarge it." *Advisory Op. to Governor re Implementation of Amendment 4, the Voting Restoration Amendment*, 288 So. 3d 1070, 1078 (Fla. 2020).
>
> We thus recognize that the goal of interpretation is to arrive at a "fair reading" of the text by "determining the application of [the] text to given facts on the basis of how a reasonable reader, fully competent in the language, would have understood the text at the time it was issued." This requires a methodical and consistent approach involving "faithful reliance upon the natural or reasonable meanings of language" and "choosing always a meaning that the text will sensibly bear by the fair use of language." Frederick J. de Sloovère, *Textual Interpretation of Statutes*, 11 N.Y.U. L.Q. Rev. 538, 541 (1934), *quoted in* Scalia & Garner, *Reading Law* at 34.

Ham v. Portfolio Recovery Assocs., 308 So. 3d 942, 946–47 (Fla. 2020) (emphasis added) (some citations omitted). "[E]very word and every provision is to be given effect …. None should be ignored. None should needlessly be given an interpretation that causes it to duplicate another provision or have no consequence." *Parrish v. State*

Farm Fla. Ins. Co., 356 So. 3d 771, 777 (Fla. 2023) (quoting Scalia & Garner, *Reading Law*, at 174).

In the property insurance context, there are many dates in the life of a claim: (1) the date the insurance policy incepts (or renews), (2) the date the loss occurs, (3) the date of breach, and (4) the date the lawsuit is filed. This Court is called upon to determine *which* date triggers application of the notice of intent requirement of section 627.70152(3), Florida Statutes, for cases that involve insurance policies issued or renewed prior to July 1, 2021. While the statute's plain language applies *prospectively* to "suits filed" after the statute's effective date, the concept of "retroactivity" features here pursuant to Ms. Hughes' argument that her policy came into force (regardless of the date of loss) before that date.

The plain language of section 627.70152 clearly sets out its applicability:

> (1) Application.—This section applies exclusively to all suits not brought by an assignee arising under a residential or commercial property insurance policy, including a residential or commercial property insurance policy issued by an eligible surplus lines insurer.

§ 627.70152(1), Fla. Stat. (2021) (emphasis added).

The Legislature made no reference in the statute to any other date in the life of a claim: "date of loss," "breach," "claim denial," or "insurance policy inception." This is perfectly understandable because the legislative concern and focus was to reduce *suits*. Thus, the statute plainly applied to, and was triggered by, *any lawsuit*. Similar to the plain language of the assignment of benefits ("AOB") statute that initially applied to *assignment agreements* (now limited to assignments entered into before January 1, 2023), not underlying policies, the trigger under this broader pre-suit statute is "any suit" filed. *Total Care Restoration v. Citizens Prop. Ins. Corp.*, 337 So. 3d 74, 76 (Fla. 4th DCA 2022) ("Contrary to Total Care's argument, the statute was not applied retroactively—the trial court applied it to *an assignment* executed after the effective date of the statute.") (emphasis added).

Likewise, in defining basic terms such as "claimant," the Legislature focused on "an insured who is filing suit...." § 627.70152(2)(b), Fla. Stat. (2021) (emphasis added). Further dissecting the statute, its cornerstone, subsection (3), provided that as a "condition precedent to filing a suit under a property insurance policy, a claimant must provide the [Department of Financial

Services] with written notice of intent to initiate litigation…." § 627.70152(3), Fla. Stat. (emphasis added). Elevating the supremacy of the text, the filing of the suit is the act tethered to the pre-suit notice requirement. At all times, the statute's focus remains consistent throughout with the triggering event being a suit.

Finally, the consequence for not complying with the procedural pre-suit notice is dismissal of suit without prejudice. § 627.70152(3), Fla. Stat. There is no suit preclusion and no removal of any substantive, prospective fee expectation once suit is ripe. However, the statute is clear: suit is the applicable date for triggering the statute's application because the core of the statute's procedural requirements pertain to a pre-suit notice and dismissal without prejudice of a suit.

Therefore, the Legislature's clear and singular focus throughout the statute on "suit" compels only one conclusion: The statute applies to any suit filed on or after the statute's effective date of July 1, 2021. If a claimant files suit on or after the statute's effective date of July 1, 2021, and has not first satisfied the pre-suit notice and potential resolution period, the statute requires a mandatory, ministerial dismissal without prejudice. § 627.70152(5), Fla. Stat.

II. LEGISLATIVE HISTORY SUPPORTS THE CLEAR LANGUAGE OF THE STATUTE'S APPLICABILITY TO SUITS FILED ON OR AFTER JULY 1, 2021

If the plain text is not sufficiently compelling, Amici offer legislative history in support. Considering legislative history, only the same conclusion can be drawn: The suit is the triggering event implicating section 627.70152's pre-suit notice requirement.

When interpreting statutes, legislative intent is the polestar. *Diamond Aircraft Indus., v. Horowitch*, 107 So. 3d 362, 267 (Fla. 2013). "[C]ourts should construe a statute so that the plain intent of the Legislature would be given effect …." *Dep't of Pub. Welfare v. Bland*, 66 So. 2d 59, 61 (Fla. 1953). If language is susceptible to more than one meaning,[2] legislative history may be helpful to ascertain intent. *Rollins v. Pizzarelli*, 761 So. 2d 294, 299 (Fla. 2000).

In enacting section 627.70152, the Legislature considered and rejected a focus on other triggering events in the life of a claim. Senate Bill 76's companion bill, House Bill 305, provided in one draft that the statute "applies exclusively to all suits arising under a residential

[2] Amici disagree with the Sixth District's determination in *Hughes* that "all suits" is amenable to more than one meaning. *Hughes* erroneously determined that "all suits" referred to "types of cases and policies," not timing. 374 So. 3d at 906.

or commercial property insurance policy not brought by an assignee which is issued or renewed on or after July 1, 2021." (A:77) (emphasis added). This language was tellingly not included in the legislation signed into law. The Court's ability to rely on the fact that this language did not make it into the law is supported by its ability to rely on similar statutory omissions. *See, e.g.*, *Cason v. Dep't of Mgmt. Servs.*, 944 So. 2d 306, 315 (Fla. 2006) (the Court may look to what the Legislature "has omitted in the statute in question" by pointing to language in other statutes that the Legislature knew how to include); *State v. Gabriel*, 314 So. 3d 1243, 1248 (Fla. 2021) ("When the legislature has used a term … in one section of the statute but omits it in another section … we will not imply it where it has been excluded.").

This language's intentional deletion and replacement with specific text applying the statute to all suits filed on or after July 1, 2021, emphasized the intent for the statute to yield *immediate* relief to the industry and courts. Had the rejected version been enacted, the application of SB 76 would not have provided the desired palliative impact for some time.

Furthermore, no debate exists that the statute intentionally addressed an immediate need and legitimate legislative policy decision to alleviate the first-party insurance crisis by requiring a pre-suit resolution path. It is logical to see how fashioning a process that would provide immediate relief motivated the focus on suits filed. If the pre-suit notice works as intended, the insurer's first notice of a loss will be comparatively non-adversarial and provide both parties an opportunity to resolve the dispute before the insurer is exposed to a potentially adverse loss reserve and the unpredictable litigation costs that significantly contributed to the crisis.

III. *COLE* AND *CANTENS* CORRECTLY HELD THAT "RETROACTIVE" APPLICATION DOES NOT AFFECT POLICYHOLDERS' SUBSTANTIVE RIGHTS

The *Cole* and *Cantens* Courts correctly held that section 627.70152(3)'s pre-suit notice requirement is part of the "course, form, manner, means, method, mode, order, process or steps by which a party enforces substantive rights …." *Cole*, 363 So. 3d at 1093; *Cantens*, 49 Fla. L. Weekly D360, at *3. Amici submit that the then-new fee *calculation* of section 627.70152(8) is not material to the conflict issue because *Cole* and *Cantens* found section 627.70152(8)

not implicated by dismissal without prejudice and severable from the statute's remainder. *Cole*, 363 So. 3d at 1094-95; *Cantens*, 49 Fla. L. Weekly D360, at *3 n.1.

Importantly, even the Sixth District in *Hughes* did not consider the numerical components of section 627.70152(8) material to its analysis. 374 So. 3d at 904 n.4 ("[W]e determine that section 627.70152 is substantive and cannot be applied retroactively even without considering the changes to the method of calculating attorneys' fees awards ...") (emphasis added). Therefore, assuming this Court will find that section 627.70152 expresses "retroactive" intent, section 627.70152(8)'s impact on *quantum* of attorneys' fees that could be recovered dependent on the *outcome* of litigation is immaterial to the conflict issue and this Court's ensuing inquiry.

The substantive/procedural conflict issue, then, boils down to whether *Hughes* was correct to hold that a "simpl[e] delay [in] the insured's ability to recover attorneys' fees" renders section 627.70152(3) "substantive." 374 So. 3d at 908-09. It was not.

An important foundational fact pertains to when fee entitlement attaches to a property insurance claim. Under section 627.70152's predecessor, no fee right existed until a suit resulted in a decree or

judgment in favor of the insured. *See* § 627.428, Fla. Stat (2020). Simply, the existence of an insurance contract has never formed any entitlement to attorneys' fees; suit filing and a subsequent recovery in the insured's favor did. Section 627.70152 did not remove the substantive fee entitlement tethered to a recovery of benefits. Instead, it simply places a procedural condition precedent *before* this substantive right can vest. As such, it is difficult to conceive of how the brief delay of compliance impairs a *vested* right or imposes a new penalty.

Under either fee statute, before a lawsuit was filed, there was an expectation of fees, but no vested right. As such, the argument that enactment of section 627.70152 impacted a substantive right if applied "retroactively" to an insurance contract issued or renewed before the statute's effective date constitutes a logical fallacy based on an incorrect presumption that the contract created the fee entitlement; it does not.

Moreover, "the presumption against retroactivity is only a default rule of statutory construction. The essential purpose of statutory construction is to determine legislative intent." *Metro. Dade Cnty. v. Chase Fed. Hous. Corp.*, 737 So. 2d 494, 500 (Fla. 1999). The

presumption can be rebutted by evidence of legislative intent. *Id.* In determining legislative intent as to retroactivity, "both the terms of the statute and the purpose of the enactment must be considered." *Id.* (internal citations omitted).

Here, "the legislature expressed a clear intent" for the statute to apply to all suits filed after July 1, 2021. *Cole*, 363 So. 3d at 1093. If the Legislature intended to limit the notice provision to policies issued after that date, it knows how to and would have said so. *Id.* The Sixth District erred in concluding that "[s]ection 627.70152's text contains no clear evidence of legislative intent for retroactive application." *Hughes*, 374 So. 3d at 906. In fact, *only* as it relates to the first prong of the retroactivity analysis, *Cole* and *Cantens* are consistent with *Menendez v. Progressive Express Insurance Co.*, 35 So. 3d 873 (Fla. 2010), where the language simply concerned the PIP statutory amendment's effective date. *See id.* at 874 n.1, 875, 877 ("In this case, we conclude that the Legislature intended for the statutory presuit notice provision to be applied retroactively [to policies issued before the statutory change].").

Nevertheless, on the substantive/procedural distinction, why section 627.70152 is not controlled by *Menendez* is gleaned from this

Court's distinguishable reasoning to decline retroactive application of the PIP statute. There, this Court recognized that the amended PIP statute provides an insurer additional time to pay an *overdue* claim. *Menendez,* 35 So. 3d at 878. The concept of "overdue" payment does not exist in property insurance, where insurers do not merely receive a medical bill, but frequently rely on the observations and conclusions of independent field adjusters or engineers to determine whether a covered loss was sustained, and if so, to reach a factually supportable actual or replacement cost value estimate. Additionally, the amendment in *Menendez* capped the penalties to an insurer. *Id.* These concerns do not exist here. Unlike under the PIP statutory scheme, there is no expectation in a first-party insurance claim of receiving "swift and virtually automatic payment" and therefore no "broader statutory scheme" analogous to the No-Fault Law to consider. *Id.* at 876-77.

Section 627.70152 meaningfully contrasts with *Menendez*'s PIP statute and does not "impair[] a vested right, create[] a new obligation, or impose[] a new penalty." *Id.* Section 627.70152(5)'s provision for dismissal without prejudice if the statutory notice conditions are not met is unlike the PIP statute's "penalty" where an

insurer's payment following notice "shield[ed]" it from further liability by imposing suit preclusion.[3] Here, the insured may place the insurer on notice of the amount of attorney's fees incurred in the notice of intent, and the Legislature expressly precluded argument that the notice should limit evidence of attorney's fees that may be recovered if the insured's suit is successful. § 627.70152(6)(b), Fla. Stat.

The *Hughes* Court erred in determining that the statute "potentially" affording an insurer "an extra 24 days to pay a claim" … impacted a pre-statute, substantive right held by the insured as a matter of law. 374 So. 3d at 908. As *Cole* held, this is not a "substantive 'delay' in filing suit." 363 So. 3d at 1095. And on this point, distinguishing *Menendez*, Judge Bokor in *Cantens* made the truly critical observation that section 627.70152(3) "does not give an insurer *additional time to make a coverage decision, as it applies only after a coverage determination has already been made*." 49 Fla. L. Weekly D360, at *3 (emphasis added).

[3] Section 627.736(11)(d), Fla. Stat. (2001), provided that, if the overdue PIP claim was paid with interest and a penalty, "no action for nonpayment or late payment may be brought against the insurer." (emphasis added).

Here, the rights to obtain indemnity for covered loss under the policy and file suit, if needed, remain intact once the claimant complies with the law. As *Cole* held, "[n]one of these procedural provisions limits the potential recovery or remedy in any way." 363 So. 3d at 1094.

In section 627.70152, the only "benefit" to an insurer simultaneously results in equal benefit to the insured: possible early resolution without delay and cost of litigation. The statute expedites the procedural aspects of claim determination and litigation and promotes early settlement, adopting a commonsense approach to the crisis facing the industry and courts.

CONCLUSION

In response to the avalanche of first-party property insurance litigation and its deleterious impact on Florida's property insurance market, the Legislature passed SB 76 to immediately govern lawsuits filed on or after July 1, 2021. Section 627.70152 encourages pre-suit resolution and avoids property insurance lawsuits driven by the proverbial fee tail wagging the claim dog.

The statute's plain language defines its scope, and this Court can be assured of that clarity by the consistent legislative history.

Accordingly, Amici join Universal in asking this Court to approve *Cole* and *Cantens*, and disapprove *Hughes*.

Respectfully submitted,

/s/ *Kara Rockenbach Link*

Kara Rockenbach Link, Esq.
Florida Bar No.: 0044903
Daniel M. Schwarz, Esq.
Florida Bar No.: 92537
Link & Rockenbach, PA
1555 Palm Beach Lakes Blvd., Suite 930
West Palm Beach, FL 33401
Telephone: (561) 847-4408
kara@linkrocklaw.com
daniel@linkrocklaw.com

William W. Large, Esq.
Florida Bar No.: 981273
Florida Justice Reform Institute
210 S. Monroe Street
Tallahassee, FL 32031
Telephone: (850) 222-0170
william@fljustice.org

Michael W. Carlson, Esq.
Florida Bar No.: 56235
Personal Insurance Federation of Florida
215 S. Monroe Street, Suite 835
Tallahassee, FL 32301-1867
Telephone: 850-597-7425
michael.carlson@piff.net

CERTIFICATE OF SERVICE

We hereby certify that a true and correct copy of the foregoing has been filed with the Florida Court's e-Filing Portal and thereby served in compliance with Florida Rule of General Practice and Judicial Administration 2.516(b)(1) on this 24th day of July, 2024, upon: **Dinah S. Stein, Esq.** and **Aneta McCleary, Esq.**, Hicks, Porter, Ebenfeld & Stein, P.A., 5301 Blue Lagoon Drive, 9th Floor, Miami, FL 33126; Emails: dstein@mhickslaw.com; amccleary@mhickslaw.com; and eclerk@mhickslaw.com; *Counsel for Petitioner*; **Raymond T. Elligett, Jr., Esq.** and **Amy S. Farrior, Esq.**, Buell & Elligett, P.A., 805 W. Azeele Street, Tampa, FL 33606; Emails: elligett@belawtampa.com; farrior@belawtampa.com; and pisciotti@belawtampa.com; *Counsel for Respondent*; **Matthew R. Danahy, Esq.** and **Erin Dunnavant, Esq.**, Danahy & Dunnavant, P.A., 901 W. Swann Avenue, Tampa, FL 33606; Emails: matt@danddlaw.com; courtney@danddlaw.com; and service@danddlaw.com; *Counsel for Respondent*; **Michael Dobson, Esq.** Florida Department of Financial Services, Office of the General Counsel, 200 E. Gaines Street, Tallahassee, FL 32399; Email: Michael.dobson@myfloridacfo.com; *Counsel for Prospective Amicus*

Curiae Florida Department of Financial Services; **Joseph W. Jacquot, Esq.**, 1 Independent Drive, Suite 2300, Jacksonville, FL 32202; Emails: jjacquot@gunster.com and wpruim@gunster.com; *Counsel for Amicus Curiae The Federal Association of Insurance Reform;* and **Stephen A. Weisbrod, Esq.**, Weisbrod Matteis & Copley, PLLC, 201 S. Biscayne Blvd., 28th Floor, Miami, FL 33131, Emails: sweisbrod@wmclaw.com and irma@wmclaw.com; *Counsel for Amicus Curiae Venetia Condominium Association, Inc.*

LINK & ROCKENBACH, PA
Counsel for Amici Curiae, Florida Justice Reform Institute, American Property Casualty Insurance Association, National Association of Mutual Insurance Companies, and Personal Insurance Federation of Florida
1555 Palm Beach Lakes Blvd., Suite 930
West Palm Beach, FL 33401
Telephone: 561-847-4408
Facsimile: 561-855-2891
Emails: kara@linkrocklaw.com
daniel@linkrocklaw.com
troy@linkrocklaw.com

BY: */s/ Kara Rockenbach Link*
KARA ROCKENBACH LINK, ESQ.
Florida Bar No.: 0044903
DANIEL M. SCHWARZ, ESQ.
Florida Bar No.: 92537

PERSONAL INSURANCE FEDERATION OF FLORIDA
Michael W. Carlson, Esq.
Florida Bar No.: 56235
Counsel for PIFF
215 S. Monroe Street, Suite 835
Tallahassee, FL 32301-1867
Telephone: 850-597-7425
Facsimile: 850-544-9576
michael.carlson@piff.net

FLORIDA JUSTICE REFORM INSTITUTE
William W. Large, Esq.
Florida Bar No.: 981273
Counsel for FJRI
210 S. Monroe Street
Tallahassee, FL 32301-1824
Telephone: 850-222-0170
Facsimile: 850-222-1098
william@fljustice.org

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that this Amicus Curiae Brief is prepared in Bookman Old Style 14-point font and, excluding the parts of the Brief exempted by Florida Rule of Appellate Procedure 9.045(e), complies with the word count limit requirement of Rule 9.370(b).

BY: */s/ Kara Rockenbach Link*
KARA ROCKENBACH LINK, ESQ.
Florida Bar No.: 0044903
DANIEL M. SCHWARZ, ESQ.
Florida Bar No.: 92537