**IN THE SUPREME COURT OF FLORIDA**

CASE NO.: SC19-1394
L.T. Case No. 5D17-2841

CITIZENS PROPERTY
INSURANCE CORPORATION,

Petitioner,

v.

MANOR HOUSE LLC, *et al.*,

Respondents.
_____/

ON DISCRETIONARY REVIEW OF A DECISION OF THE
FIFTH DISTRICT COURT OF APPEAL

# UNITED POLICYHOLDERS' *AMICUS CURIAE* ANSWER BRIEF IN SUPPORT OF RESPONDENTS

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## TABLE OF CONTENTS

**Page**

## TABLE OF AUTHORITIES

**Page(s)**

**Cases**

## TABLE OF AUTHORITIES
***(continued)***

**Page(s)**

## TABLE OF AUTHORITIES
***(continued)***

**Page(s)**

## TABLE OF AUTHORITIES
***(continued)***

**Page(s)**



**Statutes**



**Other Authorities**

## TABLE OF AUTHORITIES
***(continued)***

**Page(s)**

## STATEMENT OF IDENTITY AND INTEREST

The application of insurance contracts requires special judicial handling. Not only are insurance contracts adhesive in nature, which compels judicial balancing, but effectuating indemnification in case of loss is a fundamental economic and social objective that courts can advance. United Policyholders ("UP") respectfully seeks to assist this Court in fulfilling these important roles.

UP is a non-profit, tax-exempt, charitable organization founded in 1991 that provides valuable information and assistance to the public on insurers' duties and policyholders' rights. UP monitors developments in the insurance marketplace and serves as a voice for policyholders in legislative and regulatory forums. UP helps preserve the integrity of the insurance system by educating consumers and advocating for fairness in sales and claim practices. Grants, donations and volunteers support the organization's work. UP does not accept funding from insurance companies.

UP's work is divided into three program areas: *Roadmap to Recovery*™ (disaster recovery and claim help), *Roadmap to Preparedness* (disaster preparedness through insurance education), and *Advocacy and Action* (advancing pro-consumer laws and public policy through submission of *amicus curiae*). UP hosts a library of informational publications and videos related to personal and commercial insurance products, coverage and the claims process at www.uphelp.org.

UP has been serving Florida residents since 1992 when we helped promote fair claim settlements in the aftermath of Hurricane Andrew. Our activities in the Sunshine State have included long-term disaster recovery assistance; consumer advocacy related to homeowners' insurance rates and availability (i.e. depopulating Citizens); promoting preparedness and mitigation; educating and assisting consumers navigating the complicated insurance claims process under wind, flood, and liability policies. State insurance regulators, including the Florida Office of Insurance Regulation, academics, and journalists throughout the U.S. routinely engage with UP on issues impacting policyholders. UP's Executive Director, Amy Bach, Esq., has served as an official consumer representative to the National Association of Insurance Commissioners since 2009.

In furtherance of its mission, UP regularly appears as *amicus curiae* in courts nationwide to advance the policyholder's perspective on insurance cases likely to have widespread impact. UP's *amicus* brief was cited in the U.S. Supreme Court's opinion in *Humana Inc. v. Forsyth*, 525 U.S. 299 (1999).

UP has been actively involved as *amicus curiae* in Florida courts and submitted briefs in recent cases, including: *Travelers Indemnity Co. v. Richard McKenzie & Sons, Inc.*, Case. No. 18-13172-D (11th Cir. 2018); *Harvey v. Geico General Insurance Co.*, Case No. SC17-85 (Fla. 2017); *Escobar v. Tower Hill Signature Insurance Co.*, Case No. 3D16-1844 (Fla. 3d DCA 2017); *Vazquez v.*

*Southern Fidelity Property & Casualty, Inc.*, Case No. 3D16-915 (Fla. 3d DCA 2016); and *Altman Contractors, Inc. v. Crum and Forster Specialty Ins. Co.*, Case No. SC16-1420 (Fla. 2016). UP seeks to fulfill the classic role of *amicus curiae* by assisting in a case of general public interest, supplementing the efforts of counsel, and drawing the court's attention to law that may have escaped consideration. *Miller-Wohl Co., Inc. v. Comm'r of Labor & Indus.*, 694 F.2d 203, 204 (9th Cir. 1982). As commentators have stressed, an *amicus* is often in a superior position to focus the court's attention on the broad implications of various possible rulings. R. Stern, *E. Greggman & S. Shapiro, Supreme Court Practice*, 570-71 (1986) (quoting Ennis, *Effective Amicus Briefs*, 33 CATH. U. L. REV. 603, 608 (1984)).

## STATEMENT OF THE ARGUMENT

The question before this Court is whether an existing common law remedy, consequential breach of contract damages, is within the scope of Citizens Property Insurance Corporation's ("Citizens") statutory immunity for liability from claims arising under section 624.155, Florida Statutes, colloquially known as Florida's statutory insurer bad faith statute.

Since the late-nineteenth century, Florida has adhered to the common law *Hadley v. Baxendale* rule that consequential damages caused by breach of a contract are limited to those flowing naturally from the breach, or those that were in contemplation of the parties at the time the contract was made. Although Florida

did not historically recognize an implied duty of good faith and fair dealing in the context of first-party insurance contracts, consequential breach of contract damages were recoverable consistent with *Hadley*. Florida's rejection of the later developed reasonable expectations doctrine as a rule of insurance policy interpretation did not affect the availability of consequential breach of contract damages.

In 1982, the Florida legislature codified a carrier's obligation of good faith and fair dealing, extending these obligations to insurers selling first-party insurance contracts. *See* § 624.155, Fla. Stat. The enactment of the statute, by its express terms, did not eliminate already existing common law remedies. The statutory remedies are distinct from those existing at common law because the elements of the respective claims are different. Citizens remains statutorily immune from first-party statutory bad-faith actions pursuant to section 627.351(6)(s)1, Florida Statutes, but Citizens has never been immune from common law contractual damages.

## ARGUMENT

This Court accepted jurisdiction to address the merits of the Fifth District's certified question of great public importance. The question reads as follows:

> IN A FIRST-PARTY BREACH OF INSURANCE CONTRACT ACTION BROUGHT BY AN INSURED AGAINST ITS INSURER, NOT INVOLVING SUIT UNDER SECTION 624.155, FLORIDA STATUTES, DOES FLORIDA LAW ALLOW THE INSURED TO RECOVER EXTRA-CONTRACTUAL, CONSEQUENTIAL DAMAGES?

*Manor House, LLC v. Citizens Prop. Ins. Corp.*, 277 So. 3d 658, 662-63 (Fla. 5th DCA 2019).

The question before this court is a narrow one. It involves an immunity unique to Citizens, and essentially asks whether a specific common-law theory of recovery fits into that immunity. "In order to address this question properly, it is necessary to review the evolution of the applicable Florida law." *Time Ins. Co. v. Burger*, 712 So. 2d 389, 391 (Fla. 1998).

## I. In accordance with *Hadley v. Baxendale*, Florida courts recognize the availability of consequential damages to policyholders injured by a breach of the insurance contract.

"The fundamental principle of the law of damages is that the person injured by breach of contract or by wrongful or negligent act or omission shall have fair and just compensation commensurate with the loss sustained in consequence of the defendant's act which give rise to the action. In other words, the damages awarded should be equal to and precisely commensurate with the injury sustained." *Hanna v. Martin*, 49 So. 2d 585, 587 (Fla. 1950); *see also Hodges v. Fries*, 15 So. 682 (1894). Among the damages typical of a first-party insurance dispute are those owed under the insurance policy, interest, and common law *Hadley v. Baxendale* consequential breach of contract damages.

"The basic rule governing the recovery of damages for breach of contract is set forth in the oft cited English case of *Hadley v. Baxendale*, 9 Exch. 341, 156 Eng.

Rep. 145 (1854), which holds that the appropriate damages are those that arise naturally from the breach, or those that were in the contemplation of the parties at the time the contract was made." *Life Investors Ins. Co. v. Johnson*, 422 So. 2d 32, 33-34 (Fla. 4th DCA 1982). In measuring the injury sustained from a breach of contract, since at least 1874, Florida has adhered to the principles of law set forth in *Hadley*. *See Brock v. Gale*, 14 Fla. 523 (1874); *Williams v. Atl. Coast Line R.R. Co.*, 48 So. 209, 211 (Fla. 1908); *F & B Ceco, Inc. v. Galaxy Studios, Inc.*, 201 So. 2d 597, 598 (Fla. 3d DCA 1967).

Whereas insurance policy limits provide a cap on a carrier's liability in performance of the contract, "[u]nder the rationale of *Hadley v. Baxendale,* as presently applied to insurance contracts, consequential damages are viewed as arising from the breach of contract and, therefore are not limited simply to enforcement of the contract." Bob G. Jr. Freemon, *Reasonable and Foreseeable Damages for Breach of an Insurance Contract*, 21 TORT & INS. L.J. 108, 113 (1985); *see Salamey v. Aetna Cas. & Surety*, 741 F.2d 874, 877 (6th Cir. 1984). A policyholder's entitlement to consequential damages arising from a breach of contract depends on its ability to show: (1) contractual breach by the insurer, and (2) the existence of damages that arose naturally from the breach or were in the contemplation of the parties when the contract was made – not based upon a showing of the insurer's lack of good faith.

a. Florida allows damages for a breach of contract not limited to interest on the payment due under the policy.

"The concept of consequential damages for breach of contract, while universally accepted in American jurisprudence, had its origins in the common law of England" Bob G. Jr. Freemon, *Reasonable and Foreseeable Damages for Breach of an Insurance Contract*, 21 TORT & INS. L.J. at 109; *see Hadley*, 9 Exch. 341, 156 Eng. Rep. 145. The nationwide trend towards recognizing the application of consequential damages to breach of insurance contracts is rooted in an acknowledgement that policy limits restrict the total amount payable under the policy, but are not the proper measure of damages for breach of contract. *See, e.g.*, *Rockford Mut. Ins. Co. v. Pirtle*, 911 N.E.2d 60, 67-68 (Ind. Ct. App. 2009); *Lawton v. Great Southwest Fire Ins. Co.*, 392 A.2d 576, 579 (N.H. 1978); *Reichert v. General Ins. Co.*, 428 P.2d 860, 864-67 (Cal. 1967), *vacated on other grounds on reh'g*, 442 P.2d 377 (Cal. 1968). Instead, consequential damages arising out of the breach of an insurance contract "must arise naturally from the breach, or have been in contemplation of both parties at the time they made the contract, as the probable result of a breach." *Hobbley v. Sears, Roebuck & Co.*, 450 So. 2d 332, 333 (Fla. 1st DCA 1984) (citations omitted).

Florida has not limited damages to interest on the delayed payment as the sole means of making a policyholder whole. This is grounded in a recognition of the uniqueness of the relationship between a policyholder and an insurer. *See, e.g.*,

*Jackson Life Ins. Co. v. Williams*, 566 So. 2d 1172, 1179 n.9 (Miss. 1990) ("[A]n insured bargains for more than mere eventual monetary proceeds of a policy; insureds bargain for such intangibles as risk aversion, peace of mind, and certain and prompt payment of the policy proceeds upon submission of a valid claim."); *Ainsworth v. Combined Ins. Co.*, 763 P.2d 673, 676 (Nev. 1988) ("The relationship of an insured to an insurer is one of special confidence. A consumer buys insurance for security, protection, and peace of mind." (citing *Rawlings v. Apodaca*, 726 P.2d 565 (Ariz. 1986))). An insurance contract is not an ordinary commercial contract for payment of money—

> The relationship between an insurance company and its consumer policyholder is perhaps the best example of a relational contract of dependence and inequality. . . .The insurance contract is distinctive because, as a contract that transfers risk, performance may never be required if the risk insured against never comes to pass. . . . Unlike many other contracts, because the performances are sequential, the insured cannot withhold its own performance to give the company an incentive to pay because that performance, the payment of the premium, has already occurred. Also, unlike many other contracts, once the loss has occurred, the insured cannot produce a substitute performance through another contract; a buyer whose seller breaches the duty to deliver contracted goods can measure its performance by the difference between the contract price and the market price or the cover price, but the insured cannot purchase alternative insurance against a risk that has already come to pass.

Jay M. Feinman, *The Insurance Relationship as Relational Contract and the Fairly Debatable Rule for the First-Party Bad Faith*, 46 SAN DIEGO L. REV. 553, 557-559

(2009). A policyholder purchasing coverage should be able to rely upon the contractual promise to pay.

In *Johnson*, the Fourth District noted that application of the *Hadley* "rule to commercial contracts . . . generally results in a limitation of damages to pecuniary loss resulting from the breach . . . [but there is an exception to such a limitation] in the case of commercial contracts concerned not simply with trade and commerce, but with life and death and matters of mental concern and solitude." 422 So. 2d at 33-34 (internal citations omitted). This point has been reiterated by courts across the country. *See, e.g. Salamey*, 741 F.2d at 877 ("A contract to insure . . . is a commercial contract, and damages for its breach are generally limited to the monetary value of the contract. However, Michigan law follows the rule of *Hadley v. Baxendale* . . . which held that the damages recoverable for breach of contract are those that arise naturally from the breach or those that were in the contemplation of the parties at the time the contract was made." (citation omitted)).

Policy limits are not the proper measure of damages for a breach of an insurance contract because policy limits represent the extent of contractual liability for the performance of the contract, not an agreement to restrict consequential damages. *Thomas v. Western World Ins. Co.*, 343 So. 2d 1298, 1302 (Fla. 2d DCA 1977) ("There is an important difference between the liability of an insurer who performs its obligations and that of an insurer who breaches its contract [or its

obligation of good faith and fair dealing]. The policy limits restrict only the amount the insurer may have to pay in the performance of the contract . . . they do not restrict the damages recoverable by the insured for a breach . . . by the insurer." (quoting *Comunale v. Traders & General Ins. Co.*, 328 P.2d 198, 201 (Cal. 1958))), *cert. dismissed*, 348 So. 2d 955 (Fla. 1977). Other states are in accord. See, e.g., *Standard Fire Ins. Co. v. Fraiman*, 588 S.W.2d 681, 683 (Tex. Civ. App. 1979) (holding consequential breach of contract damages are not limited to policy limits where "suit is based upon the breach of a procedural provision of the policy [such as the appraisal provision]"); *Lawton*, 392 A.2d at 579 (The New Hampshire Supreme Court, in recognition of the nature of the insurance relationship, held "policy limits restrict the amount the insurer may have to pay in the performance of the contract, not the damages that are recoverable for its breach." (citations omitted)); *Reichert*, 482 P.2d at 865 ("The insurers' liability is not limited to the amount specified in the policy." (citations omitted)).

b. Consequential damages caused by breach of an insurance contract are distinct from damages caused by an insurer's violation of section 624.155.

Citizens and its *amici* repeatedly assert that the consequential damages sought by Respondents are actually "bad faith" damages in disguise. This is incorrect. Indeed, common-law consequential breach of contract damages pre-existed the

enactment of Florida's bad-faith statute. *See, e.g.*, *Talat Enters. v. Aetna Cas. & Sur. Co.*, 753 So. 2d 1278, 1281 (Fla. 2000) (citation omitted).

An insurer's "specific refusal to pay a claim" is a breach of the policy "governed by the general principles of contract law." *State Farm Mut. Auto. Ins. Co. v. Lee*, 678 So. 2d 818, 819 n.2 (Fla. 1996). The type of common-law breach present in *Lee* (not paying a required amount within the time-frame provide by the policy), is different entirely from a statutory claim grounded in the insurers obligation of good faith that "requires the insurer to timely evaluate and pay benefits owed on the insurance policy," *Vest v. Travelers Ins. Co.*, 753 So. 2d 1270, 1275-1276 (Fla. 2000). This distinction is important here, where this Court must evaluate whether Citizen's **statutory immunity** extends beyond the damages recoverable in a **statutory bad-faith** cause of action and includes immunity from **breach of contract** damages.

In *No Limit Clothing, Inc. v. Allstate Insurance Co.*, No. 09-13574, 2011 WL 96869, at *17-*18 (E.D. Mich. Jan. 12, 2011), a federal district court applying Michigan law examined whether a claim against an insurance carrier for common-law consequential breach of contract damages, following the rule of *Hadley v. Baxendale*, depends on whether the breach occurred in good or bad faith. The court held, "a breaching party's good or bad faith is immaterial with respect to the availability [of this type] of consequential damages." *Id.* at *16. Rather, the "the

entitlement to [*Hadley*] consequential damages depends on [the policyholder's] ability to show that (1) [the carrier] breached the parties' contract, and (2) the claimed damages arose naturally from the breach or were in the contemplation of the parties when the contract was made." *Id.* at *18. In other words, "a breach [of a commercial contract] is a breach . . . [and] motive is not material." *Id.* at *17; *see also Pirtle*, 911 N.E.2d at 68 (holding "[the carrier's] motive for delayed payment is irrelevant" where the claim is for consequential breach of contract damages).

This Court has similarly recognized the difference between damages recoverable for a breach of an insurance contract versus those recoverable in a statutory bad-faith action. *Dadeland Depot, Inc. v. St. Paul Fire & Marine Ins. Co.*, 945 So. 2d 1216, 1222 (Fla. 2006) ("[T]he Legislature has specifically authorized first parties to recover damages in bad faith actions and that the legislation contemplated more than the recovery of the same damages already available in a breach of contract action." (citing *Burger,* 712 So. 2d 389)) (emphasis added). Indeed, Florida requires "an insured's underlying first-party action for insurance benefits against the insurer necessarily must be resolved favorably to the insured before the cause of action for bad faith in settlement negotiation can accrue." *Blanchard v. State Farm Mut. Auto Ins. Co.*, 575 So. 2d 1289, 1291 (Fla. 1991). But that does not prevent a policyholder from seeking certain consequential damages as part of the underlying breach of contract claim. *See Dadeland Depot*, 954 So. 2d at

1223 (referring to consequential damages claimed in a bad-faith action as "consequential bad faith damages").

It is well-settled that consequential damages sought in breach of contract actions are distinct from those brought in statutory bad-faith actions because different evidence is required for each (operative facts and legal standards) and they are rooted in different causes of action and theories of recovery. *See, e.g.*, *Blanchard,* 575 So. 2d at 1291 ("["T]he claim arising from bad faith is grounded upon a legal duty to act in good faith, and thus is separate and independent of the claim arising from the contractual obligation to perform." (citations omitted)); *Trafalgar at Greenacres, Ltd. V. Zurich Am. Ins. Co.*, 100 So. 3d 1155, 1157 (Fla. 4th DCA 2012) ("[T]he breach of contract action and the bad faith action were separate and distinct."); *Royal Marco Point I Condo. Ass'n v. QBE Ins. Corp.*, No. 3:07-cv-16, 2010 WL 2757240, at *12 (M.D. Fla. July 13, 2010) (noting, under Florida law, a bad faith claim is distinct from a contract claim (citations omitted)); *Slider v. State Farm Mut. Auto. Ins. Co.*, 557 S.E.2d 883, 890 (W. Va. 2001) (holding that an insured is not precluded from bringing a bad-faith action after previously bringing an action for consequential damages because "the nature of the evidence required to prevail on [the claims] differs substantially"); *Schmueser v. Burkburnett Bank*, 937 F.2d 1025, 1031 (5th Cir. 1991) (noting that under Texas law, bad-faith claim requires different proof than earlier action, seeks a different measure of

recovery, and thus is not barred by prior declaratory action); *Corral v. State Farm Mut. Auto. Ins. Co.*, 92 Cal. App. 3d 1004, 1011-12 (Cal. App. Ct. 1979) (contrasting bad-faith claim with underlying contract claim under auto insurance policy).

There are also numerous pre-requisites that must be satisfied before a policyholder can bring a claim under section 624.155. *See Allstate Indem. Co. v. Ruiz*, 899 So. 2d 1121 (Fla. 2005); *Vest*, 753 So. 2d at 1275-1276.

Other differences abound. One action is rooted in the common law, whereas the other is statutory. Causation standards also differ. Contractual consequential damages "must arise naturally from the breach, or have been in contemplation of both parties at the time they made the contract, as the probable result of a breach." *Hobbley*, 450 So. 2d at 333 (citations omitted). But under section 624.155, a policyholder can recover "those damages which are a reasonably foreseeable result of a specified violation of [the bad-faith statute] by the authorized insurer." These causation standards focus on different material facts—one concerned with the "time of contracting" the other with "reasonable" foreseeability at the time of the breach of the obligation of good faith and fair dealing. The available damages are different because the elements of the claims are different, and one cause of action cannot be merely disguised as the other by creative pleading.

Citizens and its *amici* also argue Florida's statutory bad-faith remedy provides an exclusive remedy for a carrier's delay in payment. Not so. Section 624.155 by

its own terms does not abrogate or "preempt any other remedy or cause of action provided for pursuant to any other statute or pursuant to the common law of this state." § 624.155(8), Fla. Stat. (emphasis added).

"The primary rule of statutory construction is to give effect to legislative intent, which is the polestar that guides the court in statutory construction." *Raymond James Fin. Servs., Inc. v. Phillips*, 126 So. 3d 186, 190 (Fla. 2013) (citation and internal quotation marks omitted). "In answering a statutory interpretation question, this Court must begin with the actual language used in the statute because legislative intent is determined first and foremost from the statute's text." *Id.* (citation and internal quotation marks omitted).

No cause of action for first-party bad faith existed in Florida prior to section 624.155's enactment in 1982, however, first-party breach of contract actions *did* exist at common law. *State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So. 2d 55, 58-59 (Fla. 1995) ("Until this century, actions for breaches of insurance contracts were treated the same as any other breach of contract action and damages were generally limited to those contemplated by the parties at the time they entered into the contract." (citation omitted)). Because the statute is in derogation of the common law, it must be "strictly construed in favor of the common law, and [the statute] must be clear on the extent of such abrogation or change [otherwise] . . . the common law rule stands." *Samples v. Fla. Birth-Related Neurological*, 40 So. 3d 18, 22 (Fla. 5th

DCA 2010) (citation omitted); *see Burger*, 712 So. 2d at 393 (noting that section 624.155 is in derogation of the common law and that "[a] court will presume that such a statute was not intended to alter the common law other than as clearly and plainly specified in the statue" (citations omitted)).

The plain language of the statute is clear. It does not create an exclusive remedy or abrogate existing common law contractual remedies.

## II. Consequential breach of contract damages are entirely distinct from the doctrine of reasonable expectations.

While it is true that this Court has declined to adopt the doctrine of reasonable expectations in the insurance context, *QBE Ins. Corp. v. Chalfonte Condo. Apt.* Ass'n, 94 So. 3d 541 (Fla. 2012), it is also true that the reasonable expectations doctrine is not synonymous with consequential breach of contract damages.

The doctrine of reasonable expectations is a method of contract interpretation utilized in some states where policy language is ambiguous. *Deni Assocs. v. State Farm Fire & Cas. Ins. Co.*, 711 So. 2d 1135, 1140 (Fla. 1998) ("Under this doctrine, the insured's expectations as to the scope of coverage is upheld provided that such expectations are objectively reasonable." (citation omitted)); *Hrynkiw v. Allstate Floridian Ins. Co.*, 844 So. 2d 739 (Fla. 5th DCA 2003) ("[B]ased on the doctrine of reasonable expectations, the exclusion clauses should be narrowly construed to be more consistent with the reasonable expectations of the insureds that they would be covered.").

Consequential breach of contract damages are limited by rule to those that "arise naturally from the breach, or have been in contemplation of both parties at the time they made the contract, as the probable result of a breach." *Hobbley*, 450 So. 2d at 333 (citations omitted) (emphasis added). An insured's "reasonable expectations" as to the scope of damages are not enough.

In *Chalfonte*, this Court answered the following certified question in the negative: "Does Florida law recognize a claim for breach of implied warranty of good faith and fair dealing by an insured against its insurer based on the insurer's failure to investigate and assess the insured's claim within a reasonable period of time?" 94 So. 3d at 545 (emphasis added). *Chalfonte* stands for the proposition that claims alleging a breach of "an implied covenant of good faith and fair dealing" are subsumed into actions under section 624.155. *Id.* at 549 ("[F]irst-party claims [alleging a breach of the implied warranty of good faith and fair dealing] are actually statutory bad faith claims that must be brought under section 624.155 of the Florida Statutes."). The basis of this Court's holding was that Florida law does not recognize such an implied covenant of good faith in the context of first-party insurance contracts, and that allegations of a breach of good faith must be brought as statutory bad-faith claims. *Id.* at 548.

Florida's adoption of section 624.155, Florida Statutes "authorized the first-party insured to recover more than [already existing common-law *Hadley*] breach of

contract damages," but did not eliminate the recovery of those damages in breach of contract actions. *Talat*, 753 So. 2d at 1281; *see also* § 624.155(8), Fla. Stat. ("The civil remedy specified in this section does not preempt any other remedy cause of action provided for pursuant to any other statute or pursuant to the common law of this state."). Consequential breach of contract damages are not a means of interpreting policy ambiguity, do not depend on ambiguous policy language, do not depend on a unilateral belief, and require something different than a showing of the insured's "reasonable expectations."

## III. Citizens is not immune from breach of contract actions.

As the Fifth District noted, "Citizens is immune from an action for first-party bad faith." *Manor House*, 277 So. 3d at 662 (citing *Citizens Prop. Ins. Corp. v. Perdido Sun Condo. Ass'n*, 164 So. 3d 663, 666 (Fla. 2015)).

Citizens' immunity is grounded in section 627.351(6)(s)(1), Florida Statutes, and thus, the scope of the immunity is a matter of statutory interpretation. As this Court held in *Perdido*, "[t]he clearest expression of legislative intent is found in the listed exceptions to Citizens' immunity." 164 So. 3d at 666 (citing § 627.351(6)(s)1, Fla. Stat.). The statute provides:

> (6)(s)1.—There shall be no liability on the part of, and no cause of action of any nature shall arise against [Citizens] or its agents or employees . . . for any action taken by them in the performance of their duties or responsibilities under this subsection. Such immunity does not apply to:

. . .

b. The corporation or its producing agents for breach of any contract or agreement pertaining to insurance coverage.

§ 627.351, Fla. Stat. Among the five exceptions to Citizens' immunity, the statute explicitly lists "breach of contract' actions. Thus, by its own terms, it is the intent of the legislature that Citizens not be immune from consequential breach of contract damages.

Citizens and its *amici* predict that if this Court continues to allow Citizens to be liable for consequential breach of contract damages (as it has been for years), Citizens would face financial ruin. Citizens and its *amici* offer no evidence in support. Regardless, this Court has reaffirmed on numerous occasions that "the making of social policy is a matter within the purview of the legislature—not this Court." *State v. Ashley*, 701 So. 2d 338, 343 (Fla. 1997). And "legislative intent must be determined primarily from the language of the statute and not from this Court's view of the best policy." *Perdido*, 164 So. 3d at 667 (citing *Rollings v. Pizzarelli*, 761 So. 2d 294, 299 (Fla. 2000)).

## CONCLUSION

There is no statutory, common law, or public policy reason to treat Citizens' contractual liability any different from every other insurer who collects premiums from Florida's citizens, businesses, and municipalities. For this reason and those

expressed herein, United Policyholders, as *amicus curiae*, urges this Court answer the Fifth District's certified question in the affirmative.

Dated: April 9th, 2020

Respectfully submitted,

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## CERTIFICATE OF SERVICE

In accordance with Florida Rule of Judicial Administration 2.516(b)(1), I hereby certify the foregoing was filed and served via the Florida Court's E-Filing Portal to all counsel of record on April 9, 2020.

*/s/ Matthew B. Weaver*
**Matthew B. Weaver**

## CERTIFICATE OF COMPLIANCE

WE HEREBY CERTIFY that this Amicus Brief has been typed using the 14-point Times New Roman font as required by Florida Rule of Appellate Procedure 9.210(a)(2).

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