Supreme Court of Florida

No. SC2024-0025

UNIVERSAL PROPERTY & CASUALTY INSURANCE COMPANY,
Petitioner,

vs.

REBECCA HUGHES,
Respondent.

October 22, 2026

COURIEL, C.J.

This is an insurance dispute. A statute requires that a claimant notify an insurer, by way of a state regulator, before filing a lawsuit. We must decide whether that statutory presuit notice requirement applies retroactively; that is, whether it applies to an action for breach of an insurance policy that was issued before the statute went into effect.[1] We find that the statute does not apply, and in doing so approve the decision of the Sixth District Court of

1. We have jurisdiction. Art. V, § 3(b)(4), Fla. Const.

Appeal. *See Hughes v. Universal Prop. & Cas. Ins. Co.*, 374 So. 3d 900, 910 (Fla. 6th DCA 2023).

I

From April 24, 2019, to April 24, 2020, Rebecca Hughes had a homeowners insurance policy with Universal Property & Casualty Insurance Company. On May 29, 2019, she filed a claim for water damage. Universal reviewed the claim and issued payment. Hughes objected to the amount as insufficient. Relying on three bids she obtained for the work, Hughes demanded more.

On July 1, 2021, section 627.70152, Florida Statutes, went into effect. Its enactment was part of a larger legislative effort to revise the statutes that govern property insurance policies, including the ones about who pays attorneys' fees, notice periods for bringing claims, alternative dispute resolution, lawsuits involving property insurance policies, and when to consolidate legal actions.

Four of its subsections matter here.

Section 627.70152(1), Florida Statutes (2021), states that the provision "applies exclusively to all suits not brought by an assignee

arising under a residential or commercial property insurance policy."

Section 627.70152(3) creates the presuit notice requirement. It says:

> (3) NOTICE.—
> (a) As a condition precedent to filing a suit under a property insurance policy, a claimant must provide the department[2] with written notice of intent to initiate litigation on a form provided by the department. Such notice must be given at least 10 business days before filing suit under the policy, but may not be given before the insurer has made a determination of coverage under s. 627.70131.

Id. Subsection (3)(a) further sets forth the specific information that must be included in the notice. And subsection (3)(b) tolls the statute of limitations, in certain circumstances, for claims subject to the presuit notice requirement.

Section 627.70152(5) says what happens when a claimant sues without first providing the required notice:

> (5) DISMISSAL OF SUIT.—A court must dismiss without prejudice any claimant's suit relating to a claim for which a notice of intent to initiate litigation was not given as required by this section or if such suit is commenced

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2. That is, the Department of Financial Services, which must then notify the insurer. § 627.70152(3).

> before the expiration of any time period provided under subsection (4), as applicable.

Section 627.70152(8), Florida Statutes (2021) (repealed 2022), contained multiple provisions concerning a claimant's ability to recover attorneys' fees. Of note was section 627.70152(8)(b), which provided that where a claimant's lawsuit was dismissed for failure to provide notice, the claimant could not recover any attorneys' fees incurred for services rendered before the dismissal.[3]

The Sixth District summarized:

> Before section 627.70152's enactment, an insurer had a single opportunity to evaluate and pay an insurance claim before being sued—when the insured made the claim. If an insurer wrongfully denied a claim, the

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3. There is also section 627.70152(4), which imposes a duty on insurers to create procedures to investigate and evaluate claims asserted in presuit notices and to respond in writing to such notices.

If the insurer previously denied coverage for the claim, it must respond by either accepting coverage, continuing to deny coverage, or asserting the right to reinspect the damaged property. § 627.70152(4)(a)1.–3.

If the insurer did not completely deny coverage of an initial claim, it must respond to a presuit notice with a settlement offer or by demanding that the claimant participate in an alternative dispute resolution process. § 627.70152(4)(b).

The appraisal process will toll the statute of limitations for up to the conclusion of the 90-day period after the notice of intent, after which time the insured may immediately file suit without further notice. *Id.*

> insured immediately possessed a cause of action against the insurance company for breach of the insurance policy, and the insured could immediately sue the insurance company to recover damages and attorneys' fees. After section 627.70152's enactment, an insurer now has a second opportunity to evaluate and pay a claim and to prevent the insured from asserting a cause of action for breach of the insurance policy. Specifically, after the insurer receives a pre-suit notice of intent to litigate, the insurer has an additional 10 business days to accept coverage and pay the claim. If the insurer pays the claim during that period, the insured's cause of action will never ripen and the claim for attorneys' fees the insured otherwise would have possessed will never exist.

Hughes, 374 So. 3d at 904.

On August 4, 2021, Hughes filed a lawsuit against Universal about the claim she had filed in 2019. She did not file a section 627.70152 notice prior to suit. Universal moved to dismiss on that basis. Hughes contended that section 627.70152 did not apply retroactively to policies, like hers, purchased before the statute went into effect. The trial court disagreed and dismissed her complaint without prejudice.

Hughes appealed. While that was pending, the Fourth District Court of Appeal decided *Cole v. Universal Property & Casualty Insurance Co.*, 363 So. 3d 1089 (Fla. 4th DCA 2023). In *Cole*, the Fourth District found the presuit notice requirement applied

retroactively to existing policies in effect at the time of enactment and upheld the trial court's dismissal (without prejudice) of a suit based upon the plaintiff's failure to file section 627.70152 presuit notice. *Id.* at 1095. The Fourth District found that the Legislature, in subsections (1) and (3), expressed a clear intent to have the statute apply retroactively. Specifically, the court found evidence of the Legislature's intent to focus on *suits* as the object of the law in subsection (1)'s statement that the statute "applies exclusively to *all suits* . . . arising under a residential or commercial property insurance policy." *Id.* at 1093 (quoting § 627.70152(1)). The court also found evidence of intent in the text of subsection (3), which says, "[a]s a condition precedent to filing a suit under a property insurance policy, a claimant must provide the department with written notice of intent to initiate litigation on a form provided by the department." *Id.* at 1092 (quoting § 627.70152(3)(a)). From this, the court reasoned that the notice requirement "also applies to all policies, including those already in existence at the time of the statute's effective date." *Id.* at 1093. The court surmised that "[i]f the legislature had intended to limit this presuit notice provision to policies issued after the statute's effective date, the legislature

would have included language stating so." *Id.*

The Sixth District disagreed with *Cole* and sided with Hughes, reversing the trial court. *Hughes*, 374 So. 3d at 910. The Sixth District found no clear evidence of the legislative intent for the statute to apply retroactively. *Id.* at 906. Instead, the court determined that the "all suits" language in section 627.70152(1) merely referred to the types of cases and policies to which the statute applies—cases involving residential or commercial insurance policies not brought by assignees. *Id.* at 906-07. Further, the Sixth District rejected the Fourth District's analysis of section 627.70152(3)(a), finding that it "invert[ed] Florida Supreme Court precedent requiring clear evidence of intent for a statute to apply retroactively, not a lack of evidence that the statute applies only prospectively." *Id.* at 907. The court explained that "[t]he absence of language in a statute stating that the statute is inapplicable to existing insurance policies does not constitute clear evidence of retroactive intent." *Id.* (citing *Fla. Ins. Guar. Ass'n v. Devon Neighborhood Ass'n*, 67 So. 3d 187, 197 (Fla. 2011)).

After *Cole* and *Hughes*, the First, Second, Third, and Fifth District Courts of Appeal also weighed in on section 627.70152's

retroactivity. In *Cantens v. Certain Underwriters at Lloyd's London*, 388 So. 3d 242 (Fla. 3d DCA 2024), the Third District agreed with the Fourth District that section 627.70152 had retroactive application, largely adopting the reasoning of the Fourth District. Conversely, the First, Second, and Fifth Districts held that section 627.70152 did not apply retroactively, agreeing with the analysis of the Sixth District. *See Priest v. State Farm Fla. Ins. Co.*, No. 1D2024-1577, 2026 WL 1408204 (Fla. 1st DCA May 20, 2026); *Buis v. Universal Prop. & Cas. Ins. Co.*, 394 So. 3d 738 (Fla. 2d DCA 2024); *Smith v. Universal Prop. & Cas. Ins. Co.*, 396 So. 3d 860 (Fla. 5th DCA 2024).

II

A

As a general rule, "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).[4] The parties agree that

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4. The conflict issue presents a pure question of law that is subject to de novo review. *See L. Offs. of Herssein & Herssein, P.A. v. United Servs. Auto. Ass'n*, 271 So. 3d 889, 893 (Fla. 2018).

the operative date for analyzing the statute at issue is April 24, 2019, the date on which the policy was issued. Section 627.70152 went into effect on July 1, 2021. So Universal admits that it seeks to apply section 627.70152 retroactively to Hughes's suit for breach of her 2019 policy.

We have applied a two-step test when deciding whether a statute has retroactive application: "First, the Court must ascertain whether the Legislature intended for the statute to apply retroactively. Second, if such an intent is clearly expressed, the Court must determine whether retroactive application would violate any constitutional principles." *Menendez v. Progressive Exp. Ins. Co.*, 35 So. 3d 873, 877 (Fla. 2010) (citing *Metro. Dade County v. Chase Fed. Hous. Corp.*, 737 So. 2d 494, 499 (Fla. 1999)).[5] As our traditional description of that second step suggests, at the first

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5. In *Menendez*, we held that section 627.736(11), Florida Statutes (2001), which required written notice to an auto insurer before filing a suit against the insurer, did not apply retroactively to insurance policies issued before that statute took effect. 35 So. 3d at 875. In so holding, we set forth the two-part test invoked above. *Id.* at 877; *accord Chase Fed.*, 737 So. 2d at 499; *see also Smiley v. State*, 966 So. 2d 330, 336 (Fla. 2007); *Old Port Cove Holdings, Inc. v. Old Port Cove Condo. Ass'n One*, 986 So. 2d 1279, 1284 (Fla. 2008).

step, there is no substitute for a clear legislative command in determining whether the Legislature provided for retroactive application.

It also bears emphasizing that, in looking for "intent" in the "plain language of the statute," *see Devon*, 67 So. 3d at 194, we do so using "the supremacy-of-the-text principle, recognizing that '[t]he words of a governing text are of paramount concern, and what they convey, in their context, is what the text means,' " *Coates v. R.J. Reynolds Tobacco Co.*, 365 So. 3d 353, 354 (Fla. 2023) (alteration in original) (quoting *Levy v. Levy*, 326 So. 3d 678, 681 (Fla. 2021)). The goal, as always, is to "look for the original meaning of the statutory text to keep us from overriding the bargain struck in the Legislature and signed by the Governor, that is, the law that governs us." *Tomlinson v. State*, 369 So. 3d 1142, 1146 (Fla. 2023) (citing *New Prime Inc. v. Oliveira*, 586 U.S. 105, 113 (2019)). Further, we have cautioned against the error of finding intent beyond the words of the statutory text. *See, e.g.*, *Gov't Emps. Ins. Co. v. Glassco Inc.*, 394 So. 3d 1115, 1120 (Fla. 2024) ("A court can look to statutory purpose to illuminate the meaning of the statutory text, but statutory purpose cannot be invoked to justify ignoring the

text—the Legislature's actual work product."). Thus, what we properly consider under the first prong is whether the Legislature has manifested a clear command for retroactivity in the statutory text.

Here, as to subsection (1), that is not the case. It says that the section "applies exclusively to all suits not brought by an assignee arising under a residential or commercial property insurance policy." § 627.70152(1). This addresses the types of cases and policies to which the statute applies: cases involving residential or commercial insurance policies not brought by assignees. The fact that the Legislature used the phrase "all suits" in this context does not transform this subsection into a clear command to apply section 627.70152 retroactively. We agree with the Second District that "[t]here is nothing in the language of the statute to indicate that the phrase 'all suits' is serving another purpose of expanding its reach to those suits based on policies that both predate and postdate the enactment of the statute." *Buis*, 394 So. 3d at 741.

Neither does subsection (3), the notice requirement itself, provide a clear command about retroactivity. That subsection requires that, at least ten days before filing suit, notice must be

provided to the Department of Financial Services. § 627.70152(3)(a). The subsection then sets forth in detail what information must be included in the notice. *Id.* And subsection (3)(b) tolls the statute of limitations, in certain circumstances.

As noted above, in *Cole*, the Fourth District focused on part of this subsection that says, "[a]s a condition precedent to filing a suit under a property insurance policy, a claimant must provide the department with written notice of intent to initiate litigation on a form provided by the department." § 627.70152(3)(a). Based on this, the *Cole* court found that section 627.70152 "also applies to all policies, including those already in existence at the time of the statute's effective date." 363 So. 3d at 1093. The court reasoned that, "[i]f the legislature had intended to limit this presuit notice provision to policies issued after the statute's effective date, the legislature would have included language stating so." *Id.*

Like the Sixth District, we reject this analysis, which turns our precedent on its head. At the first step of *Menendez*, we look for "clear evidence of legislative intent to apply the statute retrospectively." *Devon*, 67 So. 3d at 194 (quoting *Chase Fed.*, 737 So. 2d at 499). And "the absence of a statement in the act . . . does

not constitute clear evidence of retroactive intent." *Id.* at 197 (emphasis omitted). "In short, clear evidence must consist of more than silence." *Hughes*, 374 So. 3d at 907.

Finally, the statute has an effective date, which this Court has long considered to be evidence against retroactive application. *See Devon*, 67 So. 3d at 196 ("We have noted that the Legislature's inclusion of an effective date for an amendment is considered to be evidence rebutting intent for retroactive application of a law." (citing *State Dep't of Rev. v. Zuckerman-Vernon Corp.*, 354 So. 2d 353, 358 (Fla. 1977)).

So, on its face, no provision of section 627.70152 speaks to application of the statute to insurance policies issued before the statute's effective date. And nothing in our precedent demands that we disturb that silence. The correct answer is to respect the Legislature's choice not to clearly require retroactive application of the statute.

B

We briefly consider Universal's argument that our *Menendez* test does not apply here because section 627.70152's presuit notice requirement is procedural, not substantive.

If the presuit notice requirement stood by itself, Universal might have a point. But when we decide whether a statute is substantive in determining whether it should be given retroactive effect, we look at it "as a whole." *Menendez*, 35 So. 3d at 879-80. And as the Sixth District explained, viewed as a whole, section 627.70152 "transformed an insured's ability to sue an insurance company under a property insurance policy and an insurer's obligations to respond to and pay insurance claims." *Hughes*, 374 So. 3d at 904. The statute (1) imposes a penalty of dismissal without prejudice for failing to comply with the presuit notice requirement; (2) (under the now repealed subsection (8)(b)) provided that when a claimant's lawsuit was dismissed for failure to provide notice, the claimant could not recover any attorneys' fees incurred for services rendered before the dismissal; (3) provides a safe harbor for insurers and grants them additional time to pay benefits; and (4) delays an insured's right to initiate a lawsuit. *See supra* pp. 2-5. Given these legal effects, we find no reason to disturb the Sixth District's conclusion that section 627.70152 "significantly alters an insurer's obligation to pay and an insured's right to sue under a property insurance policy." *Hughes*, 374 So. 3d at 904.

III

We approve the decision of the Sixth District in *Hughes* to the extent it is consistent with this decision. We disapprove the decision of the Fourth District in *Cole*.

It is so ordered.

LABARGA, MUÑIZ, GROSSHANS, FRANCIS, and BARRIOS, JJ., concur.
TANENBAUM, J., concurs with an opinion.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

TANENBAUM, J., concurring.

Menendez is not needed to answer the question here. The Legislature has told us expressly that "[e]ach amendment" to the insurance code—including the addition of section 627.70152, Florida Statutes—"shall be construed to operate prospectively, unless a contrary legislative intent is *specified*." § 624.21, Fla. Stat. (emphasis supplied); *cf. Hassen v. State Farm Mut. Auto. Ins. Co.*, 674 So. 2d 106, 108 (Fla. 1996) ("It is a well established rule of statutory construction that, in the absence of an *express* legislative statement to the contrary, an enactment that affects substantive rights or creates new obligations or liabilities is presumed to apply

prospectively." (emphasis supplied)).

The Legislature heavily regulates the insurance industry (including its issuance of insurance policies and the handling of claims), and the industry adopts standard policy language and claims-handling processes against the regulatory backdrop extant at a given time. For this reason, "it is generally accepted that the statute in effect at the time an insurance contract is executed governs substantive issues arising in connection with that contract." *Hassen*, 674 So. 2d at 108. The Legislature undoubtedly is aware of this approach, an awareness likely reflected in section 624.21, Florida Statutes, originally enacted in 1982.

In the light of this, we are not going to find the retroactivity specification mandated by section 624.21 in the Legislature's silence or merely by inference. There is no *express* legislative command to apply the new section 627.70152 retrospectively—*e.g.*, a statement that it applies to all policies active (or open claims, or accrued causes of action) when the law goes into effect—so the provision applies only prospectively, to policies issued after the provision's effective date, as the Legislature has directed.

As to the assertion that section 627.70152 is procedural, the

provision is not meaningfully different from the pre-suit notice requirement set out in section 768.57, Florida Statutes (1985). And we held that the former statute was substantive, not procedural. *See Williams v. Campagnulo*, 588 So. 2d 982, 983 (Fla. 1991) ("The statute was intended to address a legitimate legislative policy decision relating to medical malpractice and established a process intended to promote the settlement of meritorious claims at an early stage without the necessity of a full adversarial proceeding.").

In turn, I agree with the Sixth District's conclusion that the statute does not apply to Hughes's suit.

Application for Review of the Decision of the District Court of Appeal
Certified Direct Conflict of Decisions &
Direct Conflict of Decisions

Sixth District - Case No. 6D2023-0296

(Collier County)

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