IN THE SUPREME COURT OF FLORIDA

CASE NO. SC19-1394

CITIZENS PROPERTY
INSURANCE CORPORATION,

Petitioner,

vs. L. T. Case No.: 5D17-2841

MANOR HOUSE, LLC, *et al.*,

Respondents.
_____ /

PETITIONER'S RESPONSE TO MOTION FOR REHEARING

Petitioner, Citizens Property Insurance Corporation, responds to Respondents, Manor House, LLC, Ocean View, LLC, and Merritt, LLC's (collectively, "Manor House['s]") motion for rehearing.

BACKGROUND

This case was before the Court on appeal from the decision of the Fifth DCA in *Manor House, LLC, et al. v. Citizens Property Insurance Corp.*, 277 So. 3d 658 (Fla. 5th DCA 2019). The case arose from Manor House's breach-of-contract claim for failing to pay under a property-insurance policy. Manor House sought about $2.5 million in extra-contractual, consequential damages for lost rental income, based on Citizens' alleged "procrastination in adjusting and paying the Manor House claims." *Id.* at 660-61; *see*

also slip op. at 2. The trial court entered partial summary judgment on this claim, finding that the policy did not cover lost rents, and that Florida law did not allow Manor House to recover consequential damages. Slip op. at 3-4.

The Fifth DCA reversed: "when an insurer breaches an insurance contract, the insured 'is entitled to recover more than the pecuniary loss involved in the balance of the payments due under the policy' in consequential damages, provided the damages 'were in contemplation of the parties at the inception of the contract.'" *Manor House*, 277 So. 3d at 661 (citation omitted). The Fifth DCA explained that the trial court's ruling had "ignore[d] the more general proposition that 'the injured party in a breach of contract action is entitled to recover monetary damages that will put it in the same position it would have been had the other party not breached the contract.'" *Id.* (citation omitted).

On January 21, this Court[1] unanimously reversed, concluding that "extra-contractual, consequential damages are not available in a first-party breach of insurance contract action because the contractual amount due to the insured is the amount owed

[1] Justice Grosshans did not participate. Slip op. at 10.

pursuant to the express terms and conditions of the policy." Slip op. at 5-6. It held that "[e]xtra-contractual damages are available in a separate bad faith action pursuant to section 624.155 but are not recoverable in this action against Citizens because Citizens is statutorily immune from first-party bad faith claims." *Id.* at 6.

ARGUMENT

Manor House now argues that this Court overlooked three issues: (1) that Citizens breached its contractual obligation to pay the appraisal award within 30 days; (2) a policy's coverages restrict only the amount the insurer must pay in performance of the contract, not in breach; and (3) the enactment of section 624.155, Florida Statutes, did not eliminate any pre-existing common law remedies. We address each argument in turn. But first we note that Manor House's brief argued each of these points already (*see* ans. br. at 21-25; 9-12, 18-19; 13-17). Manor House's motion merely regurgitates arguments this Court has rejected. For that reason alone, the motion should be denied.

In addition, as we now explain, the Court did not overlook *any* of these items—and certainly not all three.

A. This Court did not overlook Citizens' purported failure to pay the appraisal award within 30 days

Manor House argues (at 4) that the Court overlooked that a "failure to [] pay the appraisal award" within 30 days "is a contractual obligation and the resulting consequential damages from this breach are likewise contractual"—not extracontractual. Far from overlooking this purported breach, the Court acknowledged the allegations that Citizens failed "to timely pay the claim," and correctly concluded that such allegations "are found in a first-party bad faith action." Slip op. at 8. Manor House did not assert a bad faith claim against Citizens; nor could it, as Citizens is immune from such claims. *See* § 627.351(6)(s)1., Fla. Stat. (2019); *Citizens Prop. Ins. Co. v. Perdido Sun Condo. Ass'n*, 164 So. 3d 663 (Fla. 2015).

As Citizens argued in the reply brief (at 11-13), Manor House is also "substantially reframing its complaint." The *only* basis for Manor House's demand for consequential damages is Citizens' alleged "delay and failure to timely pay this claim" (R. 684). Count I's remaining allegations clarify that Manor House viewed this failure as a "wrongful denial of this claim" and a "fail[ure] and

refus[al] to fairly, honestly, or properly adjust the loss" (R. 682-83). These are the quintessential allegations of bad faith under section 624.155, Florida statutes—from which Citizens is immune. And as Citizens explained in its initial brief (at 15-18), Florida and federal courts have rejected efforts to plead around a statutory bad-faith claim by alleging a purported breach-of-contract claim. The motion cites no new authority to distinguish such allegations from ordinary bad-faith claims. It merely cites the same cases Manor House's brief had cited (*compare* motion at 4 *with* ans. br. at 22-23).

In any event, what Manor House now claims is the core of Count I does not support a demand for consequential damages. Citizens' failure to pay the appraisal award within 30 days—if it even constitutes a breach—was *de minimis* as Citizens paid *six days* late (R. 777, 3612-13, 4374). And it was Manor House's failure to provide Citizens with necessary payment information that caused the brief delay (R. 3612-13). In any case, the remedy for late payment is interest—which Citizens included—not consequential damages (*see* initial br. at 20-21).

B. The Court did not overlook the availability of consequential damages in a claim for breach of an insurance contract—in fact, this was the central issue the Court decided

Manor House argues (at 5) that this Court overlooked that a policy's coverages "only restrict what an insurer must pay when it performs"—not when it breaches the policy. Thus, Manor House contends (at 5-6), a breach of the policy should be treated like the breach of any other contract, with consequential damages available to the insured. The Court did not overlook this argument; it reached a *contrary* holding: "we conclude that extra-contractual, consequential damages are not available in a first-party breach of insurance contract action because the contractual amount due to the insured is the amount owed pursuant to the express terms and conditions of the insurance policy." Slip op. at 9.

Manor House cites no new Florida case to support its recycled argument. It relies on the same cases cited in its brief (*compare* motion at 6 (citing *State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So. 2d 55, 58-59 (Fla. 1995)) *with* ans. br. at 9, 10, 13, 17 (citing *Laforet*)). Citizens' reply brief addressed these cases (*see, e.g.*, reply br. at 3-5 (addressing *Laforet*)).

Finding no Florida authority to support its argument that a policy's coverages do not restrict the damages available for a breach, Manor House relies on various out-of-state cases it cites for the first time (*see* motion at 7). These cases do not reflect Florida law. Indeed, the cases acknowledge the competing, traditional approach adopted in states like Florida: "[C]ourts employing the traditional approach have limited an insured's damages to the amount owed under the terms of the policy, plus interest." *Machan v. UNUM Life Ins. Co. of Am.*, 116 P.3d 342, 344 (Utah 2005). In addition, these other jurisdictions have adopted the doctrine of reasonable expectations, while Florida has not. *Compare Machan*, 116 P.3d at 346 ("[T]he insured is entitled to those damages reasonably within the contemplation of, or reasonably foreseeable by, the parties at the time the contract was made," which includes "the reasonable expectations of the parties." (alteration, citation, and internal quotation marks omitted)), *with QBE Ins. Corp. v. Chalfonte Condo. Apartment Ass'n*, 94 So. 3d 541, 549 (Fla. 2012) ("[T]his Court has specifically declined to adopt the doctrine of reasonable expectations in the context of insurance contracts, concluding that construing insurance policies under this doctrine

can only lead to uncertainty and unnecessary litigation." (internal quotation marks omitted)).

Manor House also argues (at 7) that the policy does not "limit or exculpate Citizens from paying consequential damages if it breaches the policy." But Citizens need not limit damages that are not recoverable in Florida.

C. The Court did not overlook that section 624.155(8), Florida Statutes, preserved any existing common law remedies because the availability of consequential damages never existed under Florida common law

Manor House argues (at 8-10) that the Court incorrectly interpreted its decision in *Talat Enterprises, Inc. v. Aetna Cas. & Sur. Co.*, 753 So. 2d 1278 (Fla. 2000) to eliminate a common law breach-of-contract remedy (consequential damages) in violation of section 624.155(8)'s provision ensuring that section 624.155 "does not preempt any other remedy . . . provided for . . . pursuant to the common law of this state" (emphasis omitted). But *Talat* did not eliminate any remedy (or find that section 624.155 eliminated any remedy); *Talat* held that Florida law did not allow for consequential damages for breach of an insurance policy. *See Talat Enters.*, 753 So. 2d at 1283 ("In the context of a first-party insurance claim, the

contractual amount due the insured is the amount owed pursuant to the express terms and conditions of the policy . . . .").

Manor House still insists (at 10) that "[c]onsequential damages were available at common law if an insurer breached an insurance contract." It mainly relies on *Life Investors Insurance Co. v. Johnson*, 422 So. 2d 32, 33 (Fla. 4th DCA 1982), and contends (at 10) that Citizens could only dismiss it as an outlier. As Citizens' briefing noted, *Johnson* involved a materially different credit-disability insurance policy that required payment of a daily benefit to a creditor even before the insured submitted a proof of loss; not a property-insurance policy (*see* initial br. at 21-22; reply br. at 6-7). Manor House also re-cites its other cases (at 10-11), which Citizens similarly distinguished (*see, e.g.*, initial br. at 21-23; reply br. at 6-8). In addition, not one of the cases is from this Court. Manor House's only new authority is a six-paragraph federal district court order on a motion to strike, which cites the Fifth DCA's opinion as support for its decision. *See Harter v. Ohio Sec. Ins. Co.*, No. 5:20-cv-268-Oc-30PRL, 2020 U.S. Dist. LEXIS 205593, 2020 WL 6384159 (M.D. Fla. Sep. 1, 2020).

CONCLUSION

For the reasons stated, this Court should deny the motion for rehearing.

Dated: March 8, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I CERTIFY that this response has been filed through Florida's e-Filing Portal and that we have served a copy by electronic transmission on this 8th day of March 2021 on:

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