

**IN THE FOURTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA**

**STANFORD WEINER AND IRENE
WEINER**

Appellants,

v.

**UNITED PROPERTY &
CASUALTY INSURANCE
COMPANY**

Appellee,

CASE NO.: 4D22-2413

LT CASE NO. 2021-CA-004917

**CORRECTED AMICUS CURIAE BRIEF OF UNITED POLICYHOLDERS IN
SUPPORT OF PETITIONER**

January 26, 2023

Submitted on behalf of the Appellants,
STANFORD WEINER AND IRENE WEINER

ON APPEAL FROM THE CIRCUIT COURT OF THE 15TH JUDICIAL
CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

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IDENTITY AND INTEREST OF AMICUS CURIAE

United Policyholders (UP) is a highly-respected national non-profit 501(c)(3) organization. Founded in 1991, UP has operated for over 30 years as a dedicated advocate and information resource for individual and commercial insurance consumers throughout the country. UP assists Florida businesses and residents through three programs: Roadmap to Recovery™ (disaster recovery and claim help), Roadmap to Preparedness (preparedness through insurance education), and Advocacy and Action (judicial, regulatory and legislative engagements to uphold the reasonable expectations of policyholders). UP hosts a library of informational publications and videos related to personal and commercial insurance products, coverage and the claims process at its website: www.uphelp.org.

UP has been serving Florida residents since 1992 when it helped promote fair claim settlements in the aftermath of Hurricane Andrew. UP's activities in the Sunshine State have included long-term disaster recovery assistance; consumer advocacy related to homeowners' insurance rates and availability; promoting preparedness and mitigation; and 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 country 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 cautiously chooses cases and regularly appears as amicus curiae in courts nationwide to advance the policyholder's perspective on insurance cases likely to have widespread impact. Information and arguments in our briefs have been cited by the Supreme Court as well as by numerous state and federal appellate courts. See, e.g., *Humana, Inc. v. Forsyth*, 525 U.S. 299 (1999). UP has also weighed in on important insurance issues affecting homeowners and businesses in matters adjudicated before the Florida Supreme Court, Florida appellate courts, and the U.S. Court of Appeals for the 11th Circuit.

UP seeks to fulfill the classic role of amicus curiae by assisting in a case of the general public interest, supplementing the efforts of counsel, and drawing the court's attention to law that escaped consideration. As commentators have stressed, an amicus curiae 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)). UP seeks to assist this Court in helping preserve policyholders' rights and appropriately level the playing field beyond just this case.

UP has a substantial interest in this appeal because it concerns the broad implications of *Vazquez v. Citizens Prop. Ins. Corp.*, 304 So. 3d 1280, 1283 (Fla. 3d DCA 2020), why this decision should not be followed, and why the cost of compliance with Florida's matching statute must be incorporated into an insurer's payment of actual cash value. Undersigned counsel, representing UP's interests pro bono in this matter, have significant experience litigating property insurance disputes and submit that this brief will assist the Court in resolving the important state law issue presented here.

PRELIMINARY STATEMENT

Amicus Curiae United Policyholders adopts the position of Plaintiffs-Appellants seeking reversal of the trial court's judgment.

Florida's matching statute, section 626.9744(2), states that when a loss requires replacement of damaged items that do not match in quality, color, or size to undamaged adjoining areas, the insurer must afford coverage to replace the non-matching undamaged adjoining areas, restoring the property's pre-loss uniform appearance. Insurers that provide coverage on a replacement cost value (RCV) basis must include matching costs when adjusting claims.

The trial court erred by granting summary judgment for UPCIC, relying on *Vazquez v. Citizens Property Ins. Corp.*, 304 So. 3d 1280, 1283 (Fla. 3d DCA 2020) to hold that UPCIC could exclude matching costs from its initial actual cash value (ACV) payment. This Court should reverse because (1) *Vazquez* is wrongly decided and ACV payments must include depreciated matching costs, and (2) *Vazquez* does not apply where the Weiners sought RCV following UPCIC's denial of coverage for matching costs.

ARGUMENT

- I. **Actual cash value payments must include the depreciated value of undamaged property to be replaced under Florida's matching statute, contrary to *Vazquez v. Citizens Property Insurance Corp.***

It is a common misperception that homeowners' insurance serves only to restore the status quo following a loss, and any recovery that improves the policyholder's position amounts to a windfall. Many homeowners purchase replacement cost coverage, which is designed, marketed, and sold with the promise that damaged property, no matter its age or condition, will be repaired or replaced with new. Replacement cost policies insure depreciation at a higher premium, so recovery on a "new-for-old basis" is the

bargained-for benefit, not a windfall.¹

Florida has enacted two default rules that govern replacement cost policies. First, insurers need not pay RCV until work is performed, and can initially pay ACV – *i.e.*, the depreciated value of the loss.² Second, Florida’s “matching statute” allows policyholders to maintain some degree of uniformity when damaged property is replaced. If the damaged property cannot be matched in quality, color, or size, then RCV must include replacement of the adjoining undamaged property.³

This appeal concerns the intersection of these two default rules: when a policy provides RCV coverage, must the insurer’s ACV payment include matching costs? In the only case to consider this issue, *Vazquez v. Citizens Property Ins. Corp.*, 304 So. 3d 1280, 1283 (Fla. 3d DCA 2020), the Third

¹ See *Trinidad v. Fla. Peninsula Ins. Co.*, 121 So. 3d 433, 438 (Fla. 2013) (“replacement cost insurance is insurance on a property’s depreciation”); see also *Alessi v. Mid-Century Ins. Co., Inc.*, 464 S.W.3d 529, 532 (Mo. Ct. App. 2015) (“Replacement cost policies generally charge higher premiums in exchange for agreeing to repair or replace with material of like kind and quality, and it is irrelevant that the homeowner may be in a better position after a loss than before.”); Leo John Jordan, *What Price Rebuilding?*, 19 ABA Fall Brief 17, 17 (1990) (“Under replacement coverage, insureds are entitled to receive the amount necessary to rebuild a structure or replace its contents in a new condition, without deducting for depreciation. Recovery is allowed, in the words of many courts, on a new-for-old basis.”).

² Fla. Stat. § 627.7011(3)(a).

³ Fla. Stat. § 626.9744(2).

District Court of Appeal answered in the negative. Here, the trial court relied on *Vazquez* to grant summary judgment for the insurer, UPCIC, finding that the Weiners were not entitled to matching costs in an ACV payment.⁴

United Policyholders respectfully submits that the trial court's judgment should be reversed because *Vazquez* was poorly reasoned, wrongly decided, and should not be followed. Under a replacement cost policy, an insurer's ACV payment must include matching costs for three reasons: (1) in the adjustment process, ACV is determined by depreciating RCV, which necessarily includes matching costs; (2) under Florida law, ACV payments must include a contractor's labor and profit costs that, like matching costs, are not incurred until replacement; and (3) Florida's matching statute contemplates depreciation of undamaged property to be matched, which instructs that depreciated matching costs to be included in an ACV payment.

A. An insurer's ACV payment is determined by depreciating RCV, which includes matching costs.

Replacement cost policies provide coverage on a new-for-old basis, promising to improve the policyholder's position after a loss by repairing or replacing damaged property without deducting depreciation.⁵ These policies

⁴ R. 1932-1934.

⁵ *Trinidad*, 121 So. 3d at 438.

“provide greater coverage than actual cash value policies because depreciation is not excluded.”⁶

The adjustment of claims under a replacement cost policy is based on three fundamental concepts:

- **Replacement Cost Value (“RCV”)** is the amount “it would cost to replace the damaged structure on the same premises.”⁷
- **Depreciation** is the “decline in an asset’s value because of use, wear, obsolescence, or age.”⁸
- **Actual Cash Value (ACV)** is “[r]eplacement cost minus normal depreciation,” which is considered the “fair market value” of the property based on its age and condition.⁹

This produces a simple formula: RCV, less depreciation, equals ACV.¹⁰

Insurers calculate both RCV and ACV because, by statute, only ACV must be paid until repairs are performed.¹¹ While insurers may initially pay

⁶ *Id.* (citing *Goff v. State Farm Fla. Ins. Co.*, 999 So. 2d 684, 689 (Fla. 2d DCA 2008)).

⁷ *Id.* (quoting *Davis v. Allstate Ins. Co.*, 781 So. 2d 1143, 1144 (Fla. 3d DCA 2001)).

⁸ *Id.* (quoting Black’s Law Dictionary 506, 1690 (9th ed. 2009)).

⁹ *Id.* (quoting *Goff*, 999 So. 2d at 690).

¹⁰ See, e.g., *Glens Falls Ins. Co. v. Gulf Breeze Cottages*, 38 So. 2d 828, 829 (Fla. 1949) (defining ACV as “replacement cost, less depreciation”).

¹¹ Fla. Stat. § 627.7011(3)(a) (“the insurer must initially pay at least the actual cash value of the insured loss, less any applicable deductible. The insurer shall pay any remaining amounts necessary to perform such repairs as work is performed and expenses are incurred”).

ACV, claim adjustment nonetheless begins with a determination of RCV. This is because, as a practical matter, the cost of restoring property to new condition is readily ascertainable. ACV is unknown because there is no reliable secondary market for used property – say, a 10-year-old kitchen tile floor – that could supply fair market value. Also, the insurer must adjust the claim for RCV and disclose this amount so the policyholder can determine whether to undertake replacement and coordinate pricing.¹²

Once RCV is determined, the insurer may determine how much the damaged property should be depreciated to account for its age and condition. The insurer can then subtract depreciation from RCV to arrive at the initial ACV payment: “As replacement cost policies are intended to operate, following a loss, both actual cash value and the full replacement cost are determined. The difference between those figures is withheld as depreciation until the insured actually repairs or replaces the damaged

¹² The adjustment of any claim on a replacement cost policy must include the amount of an RCV payment, since RCV would be payable at the policyholder’s election. Insurers are required to timely provide a “detailed estimate of the amount of the loss,” and if payment is less than the amount of the estimate, “the insurer must provide a reasonable explanation in writing of the difference to the policyholder.” Fla. Stat. § 627.70131(3)(d) & (7)(a); see *also* Fla. Stat. § 626.9541(1)(i)3e-f (insurer must “affirm or deny full or partial coverage of claims,” and “promptly provide a reasonable explanation in writing . . . for the offer of a compromise settlement.”)

structure.”¹³

Florida’s “matching statute” mandates that RCV must include the cost of matching any replacement property with the quality, color, and size of adjoining undamaged property:

When a loss requires replacement of items and the replaced items do not match in quality, color, or size, the insurer shall make reasonable repairs or replacement of items in adjoining areas. In determining the extent of the repairs or replacement of items in adjoining areas, the insurer may consider the cost of repairing or replacing the undamaged portions of the property, the degree of uniformity that can be achieved without such cost, the remaining useful life of the undamaged portion, and other relevant factors.¹⁴

Matching is not an issue when damaged property can be repaired, since there is no new property to be matched. The matching statute makes clear that it only applies when replacement is required and matching is not possible, and in that limited circumstance, Florida law requires the insurer’s RCV calculation to include matching costs.

Viewing the adjustment process from start to finish, it is readily apparent that an insurer’s ACV payment must include matching costs. The insurer starts by determining RCV and is legally required to include any matching costs at this stage. The insurer’s ACV payment is then derived by

¹³ *Goff*, 999 So. 2d at 690 (quoting *Jordan*, 19 ABA Fall Brief 17, 21).

¹⁴ Fla. Stat. § 626.9744(2).

subtracting depreciation from RCV. The result is a simple syllogism: **since RCV must include any matching costs, and ACV is calculated as RCV less depreciation, then ACV necessarily includes the depreciated value of property to be replaced under the matching statute.**

The *Vazquez* court missed the mark, likely because it did not have the benefit of argument about how matching costs fit into the adjustment process. *Vazquez* sought only an ACV recovery, so there was no consideration of an RCV adjustment; *Vazquez* argued only that her ACV claim “includes all costs reasonably necessary to do the repairs minus depreciation,” and must allow for matching costs because they are a “replacement cost” necessary to the repairs.¹⁵ The court rejected this argument, focusing on the timing of an RCV payment under section 627.7011, rather than the scope of RCV and ACV.¹⁶ But the court did not

¹⁵ 304 So. 3d at 1285 (“The [trial] court rejected Ms. *Vazquez*’s argument—that actual cash value included costs to replace undamaged items in order to match her continuous floor—as irrelevant in this suit for actual cash value.”).

¹⁶ *Id.* (“Critically, the current version of [section 627.7011] has been changed and the provision requiring payment of replacement cost ‘whether or not the insured replaces or repairs the dwelling or property’ has been omitted.”). The court missed the import of *Trinidad* in its discussion of the scope of ACV and RCV. *Id.* at 443 (“If overhead and profit are part of actual cash value, then those costs necessarily must be part of replacement cost insurance because *replacement cost insurance encompasses actual cash value.*”) (emphasis added).

consider that ACV must include matching costs because it is derived from RCV, which must include matching costs by legislative mandate.

B. ACV payments include the depreciated value of costs contingent on replacement, such as overhead, and profit.

In *Vazquez*, both the trial and appellate courts incorrectly reasoned that ACV is limited to the damaged property, while all of the costs to repair or replace – including matching costs – were only payable as RCV after the work was performed.¹⁷ The court focused on the timing of an RCV payment under section 627.7011 and policy language stating that the insurer “shall pay any remaining amounts necessary to perform such repairs as work is performed and expenses are incurred.”¹⁸

The *Vazquez* court’s rationale is simply wrong: ACV is not limited to payment of the damaged property’s depreciated value. Florida law is well-settled that an insurer’s ACV payment must include the depreciated value of costs that the policyholder would not incur unless and until work is performed, such as a contractor’s overhead and profit.¹⁹

¹⁷ 304 So. 3d at 1285 (“the trial court limited evidence of actual cash value to the property that was actually damaged”).

¹⁸ *Id.* (“Thus, despite Ms. Vazquez’s argument, the plain language of the statute and the policy clearly require the insurer to pay any remaining amounts as the repairs are performed.”).

¹⁹ *Mills v. Foremost Ins. Co.*, 511 F.3d 1300, 1306 (11th Cir. 2008); *Goff v. State Farm Fla. Ins. Co.*, 999 So. 2d 684, 689 (Fla. 2d DCA 2008).

In *Mills*, the Eleventh Circuit Court of Appeals (applying Florida law) followed the weight of authority in determining that an insurer's ACV payment could not exclude overhead and profit if repairs were likely to require a general contractor: "A majority of courts considering the question under similarly drafted insurance policies has determined that an actual cash value payment includes a general contractor's overhead and profit charges in circumstances where the policyholder would be reasonably likely to need a general contractor in repairing or replacing the damaged property in issue."²⁰

Later that same year, Florida's Second District Court of Appeal decided *Goff*, which agreed with *Mills* and clarified that the insurer's ACV payment could depreciate elements of overhead and profit.²¹ The Florida Supreme Court then approved *Goff* in its 2013 *Trinidad* decision, declaring that "overhead and profit are included in the definition of actual cash value where the insured is reasonably likely to need a general contractor for repairs."²² According to *Trinidad*, "replacement cost insurance *encompasses* actual cash value."²³

²⁰ *Mills*, 511 F.3d at 1306.

²¹ *Goff*, 999 So. 2d at 690.

²² *Trinidad*, 121 So. 3d at 443 (citing *Goff*, 999 So.2d at 689).

²³ *See id.* at 443 (emphasis added).

The *Vazquez* court theorized that matching costs should be excluded from an ACV payment because they are contingent on replacement, and thus only paid after the work is performed.²⁴ This reasoning has been rejected, as an oft-cited Pennsylvania case explains:

[T]he issue is not whether a given cost is contingent. The issue is what State Farm agreed to pay to its insureds prior to actual repair or replacement. It agreed to pay “actual cash value,” which means “repair or replacement cost less depreciation.” Thus, ***the real inquiry is what is included in “repair or replacement costs.”*** We hold that repair or replacement costs include any cost that an insured is reasonably likely to incur in repairing or replacing a covered loss. In some instances, this will include use of a general contractor and his twenty percent overhead and profit.²⁵

Pursuant to *Mills*, *Goff*, and *Trinidad*, ACV includes the full scope of RCV less depreciation, and an insurer cannot withhold costs merely because they are contingent on work being performed. These rulings apply equally to matching costs, which are included in RCV by legislative mandate, and therefore must be included in ACV at depreciated value.

C. Florida’s matching statute contemplates that the depreciated value of property to be matched will be included in an insurer’s ACV payment.

²⁴ *Vazquez*, 304 So. 3d at 1285 (“the plain language of the statute and the policy clearly require the insurer to pay any remaining amounts as the repairs are performed”).

²⁵ *Gilderman v. State Farm Ins. Co.*, 649 A.2d 941, 945 (1994) (emphasis added).

Both the text of the matching statute, and the legislative purpose behind it, support a determination that matching costs must be included in an ACV payment. Section 626.9744(2) expressly authorizes depreciation of matching costs: “In determining the extent of the repairs or replacement of items in adjoining areas, the insurer may consider . . . *the remaining useful life of the undamaged portion.*”²⁶

The matching statute only applies when damaged property is replaced with new. Matched property is not depreciated in an RCV claim. As a result, there is no reason for the statute to instruct that an insurer may consider the “remaining useful life of undamaged property” – *i.e.*, depreciation – except to allow for depreciation of matching costs in an ACV payment.

This interpretation is also consistent with the history and purpose of the matching statute. The Florida legislature understood this law to provide an important protection for policyholders: “Consumers will benefit from the repairs done to a home that will restore it aesthetically to the appearance it enjoyed before damage was incurred without further cost to the policyholder.”²⁷ Without matching, the property’s uniform aesthetic is

²⁶ Fla. Stat. § 626.9744(2) (emphasis added).

²⁷ Fla. S. Comm. on Commerce, CS for SB 2038 (2004) Staff Analysis 13-14 (Apr. 14, 2004), https://www.flsenate.gov/Session/Bill/2004/2038/Analyses/20042038SCM_2004s2038.cm.pdf.

damaged, and the loss extends to both the damaged and undamaged property affected by the inconsistent appearance. Any buyer of the property in its damaged condition would expect to incur the full cost of restoring the aesthetic by replacing the property implicated by the matching statute.

The insurer's ACV payment also functions to assist the policyholder in contracting for repairs. Where matching costs are substantial, omitting their depreciated value from an ACV payment could impair a policyholder's ability to secure a reputable contractor and begin work. It would be illogical to assume that the legislature, having specifically authorized depreciation of undamaged property, intended to exclude matching costs from ACV in a manner that would potentially hinder the policyholder's access to this benefit.

Finally, it bears consideration that the insurer suffers no harm if required to pay depreciated matching costs as ACV. Matching costs are benefits afforded by an RCV policy, so an insurer's ACV payment, even including matching costs, still leaves the insurer underpaying benefits by withholding depreciation.²⁸

For these reasons, UP urges this Court to reject *Vazquez* and hold that

²⁸ Section 626.9744(2) also permits insurers to exclude matching costs from RCV policies. Insurers incur no loss if depreciated matching costs are paid as ACV, especially when they can choose not to insure matching costs at all, so the market would not be impacted by additional premium increases.

an insurer's ACV payment must include the depreciated value of undamaged property to be replaced under Florida's matching statute.

II. The trial court erred in granting summary judgment because the relief sought by the Weiners rendered *Vazquez* inapposite.

The trial court granted summary judgment for UPCIC based on the mistaken belief that *Vazquez* was factually apposite:

The facts in the instant matter are virtually identical to those in *Vazquez v. Citizens Prop. Ins. Corp.*, 304 So. 3d 1280 (Fla. 3rd DCA 2020), where the court held that under Florida Statute 627.7011, an insured is not entitled to RCV payment for items not directly damaged, including matching costs, until the repairs are performed, and the costs are incurred.²⁹

But *Vazquez* was driven by the remedy sought: the insured's complaint was limited to an ACV recovery, so RCV was not at issue.

The limited scope of the *Vazquez* decision is apparent when compared with *Citizens Prop. Ins. Corp. v. Tio*, 304 So. 3d 1278 (Fla. 3d DCA 2020), which the Third District Court of Appeal decided the same day. In each case, the policyholders filed suit before making repairs, and the insurers filed motions in limine seeking to exclude evidence of RCV because no repair expenses were incurred. The insurer's motion was granted in *Vazquez* and denied in *Tio*. These divergent decisions can only be reconciled by reference to the remedies sought.

²⁹ R. 1933, ¶ 6.

A. The *Tio* court held that a policyholder can recover RCV before work is performed.

In *Tio*, the policyholder sued for RCV damages before repair costs were incurred.³⁰ The court denied the insurer's motion to exclude evidence of RCV. At trial, the parties presented competing evidence that ACV was \$2,304.85, while RCV was \$92,381. The jury found for the policyholder in the amount of \$70,000.

On appeal, the insurer argued that section 627.7011(3) precludes evidence of RCV until repairs are performed. The insurer expected that, "after breaching the policy, it may enforce the terms of the policy at its convenience."³¹ The court disagreed, affirming the judgment and holding that section 627.7011(3) "does not operate as a limitation on a policyholder's remedies for . . . breach of an insurance contract."³² Policyholders are thus permitted to seek RCV before repair expenses are incurred, affording a complete remedy for all available benefits without piecemeal litigation.

B. *Vazquez* did not determine whether depreciated matching costs must be included in an ACV payment where RCV recovery was denied.

In *Vazquez*, the insurer made an ACV payment of \$33,759.52, omitting

³⁰ *Id.* at 1279.

³¹ *Id.* at 1280.

³² *Id.*

matching costs to be paid as RCV only after repair expenses were incurred.³³ The policyholder sought ACV of \$84,542.93, including \$70,000 for matching costs. By implication, the insurer “substantially overpaid the actual cash value owed,” which was \$14,542.93 without matching costs.³⁴

But unlike *Tio*, the policyholder’s complaint alleged only that the insurer had underpaid ACV by excluding matching costs.³⁵ The policyholder never sought RCV, which would have mandated inclusion of matching costs by statute. Thus, when the policyholder sought to introduce evidence of (undepreciated) matching costs, the insurer successfully characterized this as a claim for RCV and moved to exclude matching costs because the complaint was limited to ACV only.

The court “noted that Ms. Vazquez had chosen to bring suit based on the actual cash value owed,” and thus “limited the evidence to the actual cash value of the physical damage and excluded evidence of undamaged items.”³⁶ The appellate court agreed, finding that “the predecessor judge

³³ 304 So. 3d at 1282-83.

³⁴ *Id.* at 1283.

³⁵ The insured “sued Citizens for breach of contract claiming that Citizens failed to pay the *actual cash value* of the loss because she was entitled to recover \$84,542.93, which included matching costs.” *Id.* (emphasis added).

³⁶ *Id.* at 1283.

adhered to the plain language of the policy and Florida law in granting Citizens' motion in limine to preclude matching costs."³⁷ But the *Vazquez* court did not determine whether *depreciated* matching costs must be included in an ACV payment when the policyholder seeks an RCV remedy.

C. Applying *Vazquez* and *Tio*, the Weiners' ACV payment should have included depreciated matching costs.

The Third District Court of Appeal reconciled *Vazquez* and *Tio* based on the divergent remedies sought by the plaintiffs.³⁸ The Weiner's operative complaint aligns with *Tio* because it specifically sought "[g]eneral compensatory damages which result from Defendant's breach of contract in line with the scope and pricing necessary to place the Subject Property in its pre-Loss state."³⁹ The gist of the problem was that UPCIC denied coverage for matching costs, refusing to provide an RCV estimate for this recovery.⁴⁰

³⁷ *Id.* at 1286.

³⁸ *Tio*, 304 So. 3d at 1280 ("The parties' dispute in *Vazquez* concerned whether the costs associated with replacing undamaged floor tiles so that they would match the replaced damaged tiles constituted actual cash value under the policy. *Id.* This issue does not arise in this case. *Tio* initiated her lawsuit after Citizens erroneously determined *Tio's* losses were not covered by the policy; and therefore, section 627.7011(3) and the corresponding policy provision are not implicated in the instant case.").

³⁹ See R. 741-42.

⁴⁰ See Appellants' Br. 45-46.

At an absolute minimum, the Weiners were entitled to an RCV estimate confirming coverage of matching costs when work was completed. UPCIC, by producing no such estimate, forced the Weiners to file suit seeking recovery of matching costs in the form of both ACV and RCV recovery. *Vazquez* does not apply here; the Weiners were entitled to recover matching costs as both ACV and RCV.

CONCLUSION

For all the foregoing reasons, United Policyholders respectfully requests that this Court (1) decline to follow the *Vazquez* decision, (2) hold that an insurer's ACV payment must include the depreciated cost of property implicated by the matching statute, and (3) reverse the trial court's judgment and remand further proceedings consistent with these rulings, and for any and all other relief this Court deems just and proper.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by the Florida Courts E-Filing Portal on January 26, 2023, to all counsel and parties of record as follows:

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that, pursuant to Fla. R. App. P. 9.045(e), this document has been prepared in 14-point Arial Style font as required by Fla. R. App. P. 9.045(b) and contains 4217 words as required by Fla. R. App. P. 9.210.

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