

May 15, 2025

Via E-Mail (judd.hart@mclarens.com)

Judd Hart, Executive General Adjuster
McLarens
9100 S. Dadeland Blvd. Ste. 903
Miami, FL 33156-7817

Re: **Response to Letter and Claim Analysis**
AR Client/Insured: **Harbor Bay Community Development District**
Policy No: 100124618
Date of Loss: October 9, 2024
McLarens File no.: 009.023748.MI
AR File no. 730.0

Dear Judd,

As you know, I serve as District Counsel for the Harbor Bay Community Development District (“**District**”). The District received your letter and claim analysis (“**Coverage Analysis**”) in response to the claim (“**Claim**”) filed by the District with its insurer, Florida Insurance Alliance (“**FIA**”) pursuant to insurance policy number 100124618 (“**Policy**”), arising from damages incurred by the District as a result of Hurricane Milton in October 2024 (“**Hurricane**”). Upon carefully reviewing the Coverage Analysis, the District has determined that much of its Claim was improperly denied contrary to the requirements of the Policy and applicable law.

The Policy is clear that FIA is required to pay for any direct physical losses that occur during the coverage period to covered property as a result of an occurrence, unless excluded. See Policy, Section I.A, Property Coverage Agreement. An “occurrence” is defined as an event, or series of events, that results in a covered loss. Policy, Section VIII.BB. A “covered loss” is a physical loss to covered property at a covered location resulting from a peril insured against. Policy, Section VIII.J. A “peril insured against” means a risk of direct **physical loss or damage from any cause except as excluded under the Coverage Form**. Policy, Section VIII.DD (emphasis added). Accordingly, FIA is required to pay for *any direct physical loss* that occurs during the coverage period to covered property as result of *any cause* except as excluded under the Coverage Form. The exclusions are set forth in Section III of the Policy. To be excluded, the damage must be “*caused by or resulting from*” one of the enumerated exclusions set forth in the Policy.

Under Florida law, insurance policies must be construed in accordance with the plain language of the policy. *Siegle v. Progressive Consumers Ins. Co.*, 819 So. 2d 732, 735 (Fla. 2002). Any ambiguities in the policy language are to be construed against the insurer and in favor of coverage. *Id.* Pursuant to the terms of the Policy, FIA must “prove that the cause of the loss was excluded from coverage under the policy's terms” to deny coverage. *Jones v. Federated Nat'l Ins. Co.*, 235 So. 3d 936, 941 (Fla. 4th DCA 2018).

Thus, it is not sufficient to allege that the claimed damages were not caused by the Hurricane; to deny coverage, FIA must prove that the claimed damage was in fact caused by or resulting from an exclusion under the Policy. Here, neither FIA nor its engineer, Halliwell Engineering Association (“**HEA**”), has proven that the claimed damages sustained by the District were in fact caused by any of the Cited Exclusions or any other exclusion in the Policy. Accordingly, the District requests that FIA and McLarens reconsider the Claim and authorize payment in accordance with the Claim¹.

Relying on the report prepared by HEA, the Coverage Analysis alleges that certain reported damage was not the result of hurricane-related damage and therefore was not covered. Specifically, the Coverage Analysis relies on Sections III.E. 7 and 12 of the Policy (“**Cited Exclusions**”) and HEA’s report to conclude that the roof components, certain interiors, and other portions of the subject buildings (“**Disputed Damages**”) did not sustain damage from wind effects associated with the Hurricane and therefore are not covered under the Policy:

Based on conclusions as specifically contained within HEA’s Engineering Report, the roof components, certain interiors and other portions of the subject buildings at the Insured Location did not sustain damage from the wind effects associated with Hurricane Milton. As a result, the Insurer determined that the reported damage to the roof components, certain interiors, and other portions of the subject buildings is not covered under the policy.

As discussed above, this is not the correct analysis and is insufficient to deny coverage. FIA cannot deny coverage because the damage was *not caused* by a hurricane, but only if the damage was *caused* by a Cited Exclusion. As discussed herein, HEA’s report does not establish or prove that the Disputed Damages were caused by a Cited Exclusion (nor that they were definitely not caused by the Hurricane). HEA’s report is replete with speculation about the possible causes of the Disputed Damages but in no event does HEA identify a specific cause for each of the Disputed Damages, nor any of the claimed damages.

In its report, HEA admits and acknowledges that the District’s property was damaged by the Hurricane:

- a. The subject property was impacted by Hurricane Helene and Milton with maximum wind gusts that were preliminarily reported to be 32 miles per hour and an average of 72 mph respectively.
- f. The conditions found in the north area of the Fitness room fronting the east entrance are more likely than not associated with moisture intrusion from the roof,

¹ This request for reconsideration excludes the “storage shed” a/k/a “storage building” located at 5248 Admiral Point Dr., at this time. The District is presently reviewing this portion of the Claim and suspends its request for payment with respect to the storage building and/or shed pending further review.

thus Halliwell is considering this damage as being attributed to weather conditions associated with both Hurricane Helene and Milton.

j. The dock areas at the property more likely than not have been inundated from the storm surge effects along Tampa Bay.

k. The displaced and dislodged guy bridge is attributed to the flooding from the passage of Hurricane Helene.

l. The missing and bent metal components of the roller assemblies more likely than not had been exacerbated by the flooding effects as a result of the storm surge that occurred following the passage of Hurricane Helene.

m. Three (3) Aquacal Autopilot Great Bad Booper pool water heaters were reported to have operational issues following the Event. HEA observed two of the pool heaters to have faults and one pool heater to not be operational. These conditions can be attributed to Hurricane Helene or Milton.

HEA does not distinguish why it speculates that some of the claimed damages were *associated with* hurricane-related weather conditions while others were not. Regardless, HEA's speculation is not sufficient to deny coverage.

Critically, HEA merely alleges that certain Disputed Damages are "associated with" or "related to" other conditions. HEA never definitively concludes that any of the Disputed Damages were actually "*caused by or resulting from*" a Cited Exclusion or any of the enumerated exclusions under the Policy:

c. The conditions observed to the ceiling wood tongue and groove planks along the rear patio canopy along the second floor of the Main Building ***are associated with*** long-term moisture conditions based on the repair work associated with the substrate conditions found above this area from the roof attic access

d. The conditions found in the ceiling drywall around diffusers in the Meeting Room ***more likely than not are related to*** the air conditioning of the space and the condensation that forms around cold diffusers during the operation of the HVAC equipment and the conditioning of the interior space daily. There was no visibly apparent evidence of moisture intrusion from the roof structure above these ceiling areas.

e. The damage conditions to the south areas of the ceiling drywall in the Fitness room are not a condition ***associated with*** the hurricane related weather effects.

g. The black staining at interior ceiling areas at the Dockers Building along recess light fixtures appears to be ***related to*** moist air being drawn out of the attic space through ceiling openings resulting in apparent mold and mildew conditions to form around light fixture openings. There was no visibly apparent evidence of

moisture intrusion within the interior space that can be attributed to wind effects from Hurricane Helene or Milton.

i. The moisture intrusion along the backside of wood framing including plywood near the upper areas of the lighthouse structure and around window locations are conditions ***associated with*** long-term weathering effects from daily environmental conditions and effects that the Lighthouse Tower has been subject to and not conditions associated with wind effects from Hurricane Helene or Milton.

With respect to the roof damages, HEA fails to even investigate the roofs, relying solely on aerial images, including images of the roofs covered by tarps, to find no “visibly apparent evidence” of hurricane-related damage to the roofs:

From the comparison review of historical aerial imagery pre and post-date of loss, there was no visibly apparent evidence depicted on the aerial imagery that would suggest the metal roof panels became loose, dislodged, and/or displaced as a result of wind effects from Hurricane Helene or Milton.

HEA cannot deny that the roofs were damaged as a result of the Hurricane or identify an excluded cause for the claimed damage because HEA never actually inspected the roofs.

Per the Policy and applicable law, FIA cannot reject a claim because the damages might be “*associated with*” or “*related to*” other causes or conditions, only if the damages were in fact solely “*caused by or resulting from*” an enumerated exclusion. Policy, Section I.A.; *Jones v. Federated Nat’l Ins. Co.*, 235 So. 3d 936, 941 (Fla. 4th DCA 2018). Accordingly, since the District incurred damages, including the Disputed Damages, from a direct physical loss or damage that cannot be solely and directly attributed to any of the Cited Exclusions or any other enumerated conclusions, FIA must cover the Claims.

The District requests that FIA and McLarens reconsider the Claim and authorize payment in full in accordance with the Claim.

Sincerely,



Michelle T. Reiss, Esq.

MTR /nrj
cc: Client