

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

SUNLIGHT LANDS, LLC,)	
)	
Plaintiff,)	CIVIL ACTION NO.:
)	2:24-cv-00267-JES-KCD
v.)	
)	
WESTCHESTER SURPLUS LINES INSURANCE COMPANY,)	
)	
Defendant.)	

**WESTCHESTER’S RESPONSE IN OPPOSITION TO
PLAINTIFF’S MOTION TO CONFIRM APPRAISAL AWARD
AND FOR ENTRY OF PARTIAL SUMAMRY JUDGMENT**

Defendant, Westchester Surplus Lines Insurance Company (“Westchester”), through its undersigned counsel, respectfully submits this Response in Opposition to Plaintiff’s Motion to Confirm Appraisal Award and For Entry of Partial Summary Judgment (“Motion to Confirm Appraisal”).

INTRODUCTION

Plaintiff’s Motion to Confirm Appraisal ignores both the facts of this case and controlling Florida law and should be denied. Plaintiff filed this lawsuit prematurely, despite Westchester’s ongoing requests for information and documentation necessary to complete its investigation of Plaintiff’s scope of damage before participating in appraisal, as is Westchester’s right to do under the

Policy. Westchester then timely issued payment to Plaintiff in the amount of the appraisal award, which was well below what Plaintiff initially sought. Confirming the appraisal award would be contrary to Florida law, as no dispositive ruling has been issued on Westchester's defenses and Plaintiff cannot be deemed the "prevailing party," as there was no wrongful denial of the claim.

Plaintiff's request for partial summary judgment is equally premature and procedurally improper. The parties have not had an adequate opportunity for discovery as required by Fed. R. Civ. P. 56(c), and genuine issues of material fact remain unresolved. Other than some limited written discovery, no depositions have been taken, no expert witnesses have been disclosed, and Westchester has not had the opportunity to fully develop its post-loss defenses, which pertain to coverage as a whole and Plaintiff's outright violation of Policy conditions. Moreover, Plaintiff's motion does not set forth any evidentiary basis, beyond the appraisal award itself, to demonstrate the absence of a genuine issue of material fact as to Westchester's alleged breach of contract. Therefore, summary judgment in Plaintiff's favor is inappropriate.

For the foregoing reasons, Plaintiff's Motion to Confirm Appraisal should be denied. Westchester respectfully requests that the Court reinstate an updated timeline for discovery, in line with Case Management and Scheduling Order dated

May 6, 2024, to allow the parties to complete discovery and the disclosure of expert reports.

STATEMENT OF UNDISPUTED MATERIAL FACTS

1. On December 14, 2022, Plaintiff, Sunlight Lands, LLC, reported a claim to Westchester for alleged property damage at 432-434 NE 16th Pl., Cape Coral, FL 33909 (“Insured Premises”) as a result of Hurricane Ian on or about September 28, 2022, (“Loss” or “Claim”). *See* Amended Complaint [D.E. 30], ¶¶6, 7; *see also* Answer and Affirmative Defenses [D.E. 35], ¶7.

2. Plaintiff retained Stellar Public Adjusting Services (“Stellar”) as its public adjuster. *See* Westchester’s Response in Opposition [D.E. 39], p. 2 of 20.

3. Westchester retained Crawford Global Technical Services and Stephens Engineering Consultants, Inc., which inspected the Insured Premises with representatives of Stellar. The inspections occurred on December 27, 2022; February 23 and March 23, 2023. *see* Answer and Affirmative Defenses [D.E. 35].

4. On April 25, 2023, Westchester issued payment to Plaintiff totaling \$27,955.54, for roof damage and for minor interior damage to the Insured Premises. *See* Answer and Affirmative Defenses [D.E. 35], ¶18.

5. On July 20, 2023, Westchester received correspondence from Stellar requesting appraisal. Stellar produced, for the very first time, an estimate totaling

\$233,056.15; a statement of loss; and photographs of the Insured Premises. *See* [D.E. 39], p. 4 of 20

6. At the November 19, 2024 evidentiary hearing, Stellar's representative, David Hueber, confirmed that Stellar did not submit any estimate, statement of loss, or photographs to Westchester prior to July 20, 2023—approximately eight months after Plaintiff retained Stellar and three months after Westchester issued payment. *See* Transcript of Evidentiary Hearing, attached as Exhibit "A," at 37:3-21; 42:5-11; 42:22-25; 43:1-4; 43:15-25; 44:1-13.

7. Stellar's July 20, 2023 correspondence also requested a supplemental payment of \$191,000.60 for Coverage A and \$14,100 for Coverage C, totaling \$205,100.60. *See* July 20, 2023, correspondence, attached hereto as Exhibit "B."

8. On August 4, 2023, Westchester confirmed receipt of the letter. On August 28, 2023, Westchester rejected the appraisal demand as premature, explaining that it needed to complete a review and investigation of the additional coverage Plaintiff requested for the first time on July 20, 2023. Stellar's estimate included damage to areas of the Insured Premises and to personal property that was not reported, nor observed, during Westchester's investigation. Westchester requested supporting documents, including repair receipts, technical evaluations and/or replacement receipts. Westchester also rejected Plaintiff's appraisal

request because Plaintiff failed to appoint a neutral appraiser, as required by the Policy. *See* [D.E. 39], p. 5 of 20.

9. On September 15, 2023, Stellar submitted a second appraisal demand naming a new appraiser but did not provide the documents Westchester's requested on August 28, 2023. Stellar sent additional e-mails to Westchester on September 22 and September 26, 2023, renewing its request to participate in appraisal. Once again, Stellar did not provide the documents Westchester requested to evaluate Plaintiff's new scope. Westchester responded reiterating its August 28, 2023 position and renewing its request for documents and information. *See* [D.E. 39], p. 5 of 20.

10. During the Claim adjustment, Plaintiff filed a complaint with the Florida Department of Financial Services ("Florida DFS"), stating that Plaintiff did not intend to be represented by Stellar and was never given the opportunity to review Stellar's first estimate. *See* [D.E. 39], p. 7 of 20.

11. On September 29, 2023, Plaintiff advised the Florida DFS that it retained Paradise Building and Renovations, Inc. ("Paradise"), which created a new estimate totaling \$124,800. Westchester received Paradise's estimate on October 12, 2024. *See* [D.E. 39], p. 8 of 20.

12. On October 26, 2023, Westchester responded to Stellar's second appraisal demand, reiterating that appraisal was premature because the scope of

Plaintiff's claim was unclear, given the newly received Paradise estimate, which materially contradicted Stellar's \$233,056.14 estimate. *See* [D.E. 39], p. 5 of 20.

13. On October 25, 2023, Plaintiff filed a Civil Remedy Notice of Insurer Violation ("CRN") with the Florida DFS. Westchester responded on December 22, 2023. *See* CRN, attached hereto as Exhibit "C." *See also* Westchester's response to CRN, attached hereto as Exhibit "D."

14. On November 7, 2023, Westchester reiterated its request for clarification on the amount of scope of Plaintiff's Claim. *See* [D.E. 39], p. 6 of 20.

15. On November 8, 2023, rather than providing clarification, Stellar issued yet another scope of damage, this time for \$159,625, and provided, for the very first time, three new invoices, dated July 5, 2023; July 27, 2023; and August 8, 2023. *See Id.*

16. On November 20, 2023, Plaintiff filed a Notice of Intent to Initiate Litigation ("NOI") with the Florida DFS, alleging improper denial of appraisal and demanding \$105,000 to settle the Claim. Westchester responded on December 4, 2023, rejecting Plaintiff's allegations and settlement demand. *See* NOI, attached hereto as exhibit "E." *See also* Westchester's response to NOI, attached hereto as Exhibit "F."

17. On February 4, 2024, Plaintiff filed its Complaint against Westchester in the Circuit Court of the Twentieth Judicial Circuit, Lee County, Florida,

asserting Breach of Contract and Petition to Enforce Appraisal. The Complaint alleged, for the very first time, that the Loss occurred in May 2022 as a result of water, a date of loss outside the Policy period of September 21, 2022 to September 21, 2023. *See* Complaint [D.E. 1].

18. Westchester removed the case to the U.S. District Court, Middle District of Florida on March 22, 2024 and filed its Answer with Affirmative Defenses on April 8, 2024. *See* Notice of Removal [D.E. 1]; *see also* Answer and Affirmative Defenses [D.E. 35].

19. On April 17, 2024, Plaintiff filed a Motion to Compel Appraisal, which Westchester opposed. *See* Motion to Compel Appraisal [D.E. 15].

20. On May 6, 2024, the Court issued a Case Management and Scheduling Order with the following discovery deadlines: “Discovery due by 5/23/2025; Plaintiff disclosure of expert report due by 2/22/2025; Defendant disclosure of expert report due by 3/24/2025 ...” *See* Case Management and Scheduling Order [D.E. 27]

21. On May 8, 2024, Plaintiff withdrew its Motion to Compel Appraisal and filed an Amended Complaint for Breach of Contract (Count I) and Petition to Compel Appraisal (Count II). *See* Notice of Withdrawal [D.E. 32].

22. Westchester filed its Answer with Affirmative Defenses to the Amended Complaint on May 21, 2024, asserting affirmative defenses for, *inter alia*,

Plaintiff's failure to comply with the several Policy conditions (Second, Third, Fourth Affirmative Defense); Concealment, Misrepresentation or Fraud (Fifth Affirmative Defense); and violation of the Coinsurance provision (Ninth Affirmative Defense). *See Answer and Affirmative Defenses [D.E. 35].*

23. On May 22, 2024, Plaintiff filed a second Motion to Compel Appraisal, which Westchester opposed on June 19, 2024. *See Motion to Compel Appraisal [D.E. 36]; see also Response in Opposition [D.E. 39].*

24. On July 11, 2024, the Court ordered an evidentiary hearing on Plaintiff's Motion to Compel Appraisal and Westchester's response to same, which was held before The Honorable Kyle C. Dudek on November 19, 2024. *See Order [D.E. 44].*

25. On November 21, 2024, the Court granted Plaintiff's Motion to Compel Appraisal and administratively closed the case pending completion of appraisal. The Order did not contain a dispositive ruling on the allegations in Plaintiff's Amended Complaint or on Westchester's Affirmative Defenses. *See November 21, 2024, Order [D.E. 69].*

26. At the time of the November 21, 2024 Order, the parties had exchanged limited written discovery but had not taken any depositions or disclosed expert witnesses. *See Order staying case [D.E. 69]*

27. On December 8, 2025, the appraisal panel submitted a written Appraisal Award. *See* Appraisal Award [D.E. 78].

28. On January 9, 2026, Westchester issued payment to Plaintiff in connection with the Appraisal Award, reserving all rights. *See* Motion to Confirm Appraisal [D.E. 79], ¶16.

29. On January 19, 2026, Plaintiff filed the instant Motion [D.E. 79].

ARGUMENT

Plaintiff's Motion to Confirm Appraisal Award should be denied for three reasons. First, confirmation of the appraisal award is premature because Westchester has properly asserted affirmative defenses based on Plaintiff's failure to comply with various Policy conditions, and there has been no dispositive ruling on those defenses. Second, the confession of judgment doctrine does not apply to this action because Westchester did not deny the claim and, rather, exercised its contractual rights to investigate Plaintiff's contradictory estimates. Third, Plaintiff is not entitled to partial summary judgment because genuine issues of material fact exist as to whether Westchester breached the Policy, and Plaintiff's motion is procedurally improper.

I. CONFIRMATION OF THE APPRAISAL AWARD IS PREMATURE

Plaintiff argues that this Court should confirm the appraisal award because Westchester fully paid the award within thirty days of it being issued, as required

by the Policy. While Plaintiff is correct that Westchester promptly paid the appraisal award and complied with the Policy's duties, Plaintiff ignores that there has yet to be a dispositive ruling on Westchester's affirmative defenses, making confirmation premature.

In *State Farm Fire & Cas. Co. v. Licea* 685 So. 2d 1285, 1288 (Fla. 1996), the Florida Supreme Court held that once parties go to appraisal, the insurer can only dispute coverage for the "loss as a whole." In other words, "once an [appraisal] award had been made, the only defenses that remain for the insurer to assert are lack of coverage for the entire claim, or violation of one of the standard policy conditions (fraud, lack of notice, failure to cooperate, etc.)." *Mont Claire At Pelican Marsh Condo. Ass'n, Inc. v. Empire Idem. Ins. Co.*, 2:19-CV-601-SPC-MRM, 2022 WL 3701584, at *3 (M.D. Fla. Aug. 11, 2022); see also *Three Palms Pointe, Inc. v. State Farm Fire & Cas. Co.*, 362 F.3d 1317, 1318 (11th Cir. 2004) (noting that after an insured moves to confirm the appraisal award, "the insurer may assert as an affirmative defense lack of coverage, policy limits, or a violation of policy conditions, such as fraud, lack of notice, or failure to cooperate").

Here, an appraisal award was issued on December 8, 2026. See Appraisal Award, [D.E. 78]. However, Westchester can still rely on its affirmative defenses asserting a lack of coverage as a whole or a violation of standard policy conditions. *Muckenfuss v. Hanover Ins. Co.*, No. 5:05-cv-261-Oc-10GRJ, 2007 WL 1174098, at *2

(M.D. Fla. Apr. 18, 2007). Therefore, before affirming the appraisal award, this Court must consider Westchester's properly pled affirmative defenses. *Mont Claire At Pelican Marsh Condo. Ass'n, Inc.*, 2022 WL 3701584 at *4. As explained in more detail below, Westchester has properly pled affirmative defenses for Plaintiff's lack of compliance with several Policy conditions, including the Loss Conditions (Second Affirmative Defense); Commercial Property Conditions--Concealment, Misrepresentation or Fraud (Fifth Affirmative Defense); and Additional Conditions--Coinsurance (Ninth Affirmative Defense). Westchester may rely on these defenses post-appraisal. *Id.* Because there has not been a dispositive ruling on Westchester's defenses of violations of these Policy conditions, confirmation of the appraisal award is premature.

A. Westchester Has Properly Pled Lack of Compliance with Various Policy Conditions

In its Answer [D.E. 35], Westchester's Second, Third, and Fourth Affirmative Defenses assert Plaintiff's non-compliance with several Policy conditions. Specifically, Westchester pled, and the undisputed facts show, that Plaintiff failed to comply with all applicable post-loss duties under the Policy, by refusing to provide the documents and information requested on several occasions, refusing to provide information regarding the scope of its claim, and refusing to engage in exchange of information needed. In its Fifth Affirmative Defense, Westchester asserts that the Plaintiff's withholding of relevant

documents and information related to its claim and Plaintiff's conflicting statements to Westchester and the Florida DFS violates the Policy's Concealment, Misrepresentation or Fraud provision.

In *Mont Claire*, the Middle District of Florida denied plaintiff's motion to confirm the appraisal award as premature because defendant properly pled defenses applicable to the loss as a whole. *Mont Claire At Pelican Marsh Condo. Ass'n, Inc.*, 2022 WL 3701584, at *5. The Court held that the defendant properly pled two affirmative defenses invoking policy limitations and the policy's legal action provision, and because there had been no adjudication of those defenses, confirmation of the appraisal award was premature. *Id.* at *4-5.

Mont Claire is analogous to the present case in that Westchester properly pled, and may now assert, affirmative defenses based on Plaintiff's categorical failure to comply with its post-loss duties, i.e., Policy conditions. As the undisputed facts demonstrate, Plaintiff first requested appraisal on July 20, 2023, after Westchester issued an undisputed payment of \$27,955.54. In that same correspondence, Plaintiff requested an additional payment and submitted an entirely new scope of damage. Westchester promptly replied, requesting additional documents necessary to evaluate Plaintiff's new scope of damage.

Rather than providing the requested documents, Plaintiff issued additional demands for appraisal on September 15, September 22, and September 26, 2023.

Westchester replied to each, reiterating its need for the outstanding documents and information. On October 12, 2023, Plaintiff provided yet another estimate, this time prepared by a newly-retained contractor, Paradise. Because this estimate conflicted with Plaintiff's prior estimates, Westchester reiterated its request for information needed to complete its evaluation of the scope. Rather than providing any clarification, Plaintiff submitted yet another estimate on November 8, 2023, together with several new invoices. Plaintiff never provided the requested clarification regarding the scope of its Claim, and this lawsuit followed shortly thereafter.

Because Westchester properly pled affirmative defenses based on Plaintiff's failure to comply with its post-loss duties, and because there has not been a dispositive ruling on those defenses, confirmation of the appraisal award is premature.

B. Westchester Did Not Waive its Post-Loss Affirmative Defenses by Issuing Payment

Plaintiff argues that the appraisal award should be confirmed because Westchester has waived all coverage defenses by paying the appraisal award. Plaintiff's argument fails as a matter of law.

"[I]t is well settled that the payment of a *previously denied claim* following the initiation of an action for recovery, but prior to the issuance of a final judgment, constitutes the functional equivalent of a confession of judgment." *Johnson v.*

Omega Ins. Co., 200 So. 3d 1207, 1215 (Fla. 2016) (emphasis added). The confession of judgment doctrine “applies where the insurer has denied benefits the insured was entitled to, forcing the insured to file suit, resulting in the insurer’s change of heart and payment before judgment.” *State Farm Ins. Co. v. Lorenzo*, 969 So. 2d 393, 397 (Fla. 5th DCA 2007). “It is the incorrect denial of benefits, not the presence of some sinister concept of ‘wrongfulness,’ that generates the basic entitlement to the fees if such denial is incorrect.” *Ivey v. Allstate Ins. Co.*, 774 So.2d 679, 684 (Fla. 2000).

Importantly, “[n]ot all post-suit payments by an insurer will constitute a confession of judgment.” *Bryant v. GeoVera Specialty Ins. Co.*, 271 So. 3d 1013, 1019 (Fla. 4th DCA 2019). The Fourth DCA in *Bryant* explained that “where an insurer valued a loss, issued payment, and was unaware of the insured’s disagreement with the damage valuation until the filing of the complaint, the insurer’s timely payment of an appraisal award during the litigation **did not** constitute a confession that the insurer breached the insurance policy.” *Id.* (emphasis added); *see also Goldman v. United Servs. Auto. Ass’n*, 244 So. 3d 310, 311-12 (Fla. 4th DCA 2018).

In *Goldman*, the insureds sued their carrier following a plumbing line leak that damaged their residence. The insurer issued payment during the adjustment of the claim and, without informing the insurer that they disputed the amount of payment, the insureds filed suit for breach of the policy. After completing

appraisal, the insurer timely paid the appraisal award and the trial court subsequently granted summary judgment in the insurer's favor.

The Fourth DCA affirmed, finding no breakdown in the claims adjusting process and no refusal to pay the claim on the part of the insurer. The court relied on *Hill* where, "the insured never gave the insurer the opportunity to incorrectly deny the benefits before filing a lawsuit," leaving the court in *Hill* questioning "whether this lawsuit was filed to force [the insurer] to conduct an appraisal or whether it was merely a preemptive lawsuit intended to obtain attorneys' fees for the usual efforts in negotiating an insurance claim." *Goldman*, 244 So. 3d 310, at 312 (citing *Hill v. State Farm Fla. Ins. Co.*, 35 So. 3d 956, 960 (Fla. 2d DCA 2010)).

The present case is analogous to *Goldman* and *Hill*. Despite Plaintiff's flagrant mischaracterization of the facts, including Plaintiff's intentional fabrications that Westchester denied the Claim and Plaintiff's request to participate in appraisal, *see* Motion to Confirm Appraisal Award, p. 5 of 21, [D.E. 79], Westchester did not deny Plaintiff's claim nor did it deny Plaintiff's request for appraisal. Rather, Westchester requested clarification as to the scope of damages that Plaintiff sought due to the multiple, contradicting estimates issued by Plaintiff's public adjuster and Plaintiff's contractor, in order to properly evaluate same before participating in appraisal. Plaintiff categorically failed to provide any of the information requested by Westchester, and it was not until this

lawsuit was filed that Plaintiff was compelled to clarify the scope of damage, thereby making appraisal ripe.

Additionally, Plaintiff's reliance on *Travelers Indem. Ins. Co. v. Meadows MRI, LLP*, 900 So. 2d 676 (Fla. 4th DCA, 2005) is misplaced. In *Meadows*, the court confirmed the insured's entitlement of attorneys' fees because the retention of legal counsel was necessary to obtain a response from Travelers regarding plaintiff's demand for appraisal. Here, in contrast, it was not until Plaintiff filed suit that Plaintiff finally clarified the amount and scope of damages it was seeking.

Plaintiff claims that judicial involvement was necessary for Westchester to participate in appraisal, but this mischaracterizes the record. Had Plaintiff provided the documentation and information Westchester had been requesting since July 20, 2023, the parties would have participated in the appraisal process without litigation. Westchester's conduct was not affected by the involvement of the judicial system--Plaintiff's was, as this lawsuit was the catalyst that finally compelled Plaintiff to provide the documents Westchester had long requested.

II. THE CONFESSION OF JUDGMENT DOCTRINE DOES NOT APPLY TO THIS ACTION

Plaintiff relies on Fla. Stat. §627.428. Plaintiff's reliance is not merely inapposite, but fundamentally misplaced. Fla. Stat. §627.428 entitles an insured to recover attorneys' fees "upon rendition of a judgment or decree against an insurer and in favor of any insured ..." However, "the provisions of chapter 627 *do not*

apply to surplus lines insurance ..." Fla. Stat. §626.913(4) (emphasis added). Westchester is a surplus line carrier – therefore, Fla. Stat. §627.428 does not apply to Westchester.

To the extent that Plaintiff relies on the “confession of judgment” doctrine, it only applies where the insurer denies benefits the insured was entitled to, thus forcing the insured to file suit, which results in the insurer’s change of heart and payment before the judgment is entered. *See Wollard v. Lloyd’s & Cos.*, 439 So. 2d 217 (Fla. 1983). Applying this statute any other way would reward unnecessary litigation. *Tristar Lodging, Inc. v. Arch Specialty Ins. Co.*, 434 F. Supp. 2d 1286, 1297-98 (M.D. Fla. 2006).

In *Federated Nat’l Ins. Co. v. Esposito*, 937 So. 2d 199 (Fla. 4th DCA 2006), the insured and the carrier disagreed on the amount of loss of a property damage claim. After the insured filed suit, the court ordered appraisal. The trial court then entered an order confirming the appraisal award and granting summary judgment in the insured’s favor. The Fourth District reversed the trial court's confirmation order and summary judgment, holding that where an insurer participates in appraisal and pays timely, there is no basis for confirming the award or awarding attorney's fees. The court reasoned that ruling otherwise "would encourage an insured to run to the courthouse rather than to participate in the alternative dispute resolution process." *Esposito*, 937 So. 2d at 200-02.

Similarly, in *Tristar*, 434 F. Supp. 2d 1286, the insured's premises suffered damage as a result of two hurricanes. The carrier issued payments and continued its investigation of the claim. The insured then filed suit. The carrier invoked appraisal, continued its investigation, and timely paid both the appraisal award and claims for which it received sufficient information. The court denied the insured's motion for summary judgment and attorney's fees, holding that "payments made pursuant to the provisions of the Policy are [not] somehow converted into a confession of judgment if done after suit is *prematurely* filed." *Id.* at 1297-98. The court emphasized that "the existence of a bona fide dispute and not the mere *possibility* of a dispute, is a crucial condition precedent" to invoking the confession of judgment doctrine. *Id.* Because the carrier fully complied with its policy obligations, payment after suit was filed did not invoke the doctrine.

The present case is virtually identical to *Tristar* and *Esposito*. Despite Plaintiff's flagrant mischaracterization of the facts, Westchester did not deny Plaintiff's claim nor did it deny Plaintiff's request to participate in appraisal. Rather, Westchester was simply exercising its rights and fulfilling its obligations under the Policy to fully evaluate Plaintiff's contradictory estimates to gain an understanding as to Plaintiff's scope of damage. Plaintiff, rather than complying with its duties under the Policy and cooperate with Westchester's investigation of

the Claim, filed a premature and unnecessary lawsuit. Because the lawsuit was not necessary to reach appraisal, Plaintiff should not be deemed the “prevailing party” for purposes of awarding attorneys’ fees, and this motion should be denied.

III. PLAINTIFF IS NOT ENTITLED TO PARTIAL SUMMARY JUDGMENT BECAUSE WESTCHESTER HAS NOT BREACHED THE CONTRACT

A motion for summary judgment should only be entered where the moving party has sustained its burden of showing that there is no genuine issue of material fact in dispute when all the evidence is viewed in the light most favorable to the non-moving party. *Sweat v. The Miller Brewing Co.*, 708 F.2d 655 (11th Cir. 1983). Additionally, the United State Supreme Court held in *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986) that the plain language of Fed. R. Civ. P. 56(c) mandates summary judgment after “adequate time for discovery and upon motion, against a party who fails to establish the existence of an essential element to that party’s case, and one which that party will bear the burden at trial.” *Id.* at 273. After the movant has met its burden under Fed. R. Civ. P. 56(c), the burden shifts to the nonmoving party to establish that there is a genuine issue of material fact. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 585 (1986).

Here, a genuine issue of material fact exists as to whether Westchester breached the Policy. As the undisputed facts of this case show, at the time Plaintiff filed this lawsuit, Westchester was still in the process of investigating the many, contradicting estimates sent by Plaintiff/Stellar to shed light on Plaintiff’s new

scope of damage. As such, Westchester did not breach the terms of its contract with Plaintiff – if anything, Plaintiff was in clear violation of its post-loss duties by failing to cooperate with Westchester’s investigation, refusing to provide documents and information requested, and refusing to clarify the scope of damage sought.

Additionally, Plaintiff’s request for summary judgment is procedurally improper. The parties have not had “adequate time for discovery,” as required by Fed. R. Civ. P. 56(c) and, other than the appraisal award, Plaintiff has not referred to any other evidence showing that there is no genuine issue of material fact as to Westchester’s alleged breach of the Policy. Plaintiff’s motion also does not set forth any basis upon which to rule as a matter of law that Westchester breached the contract. Therefore, because Plaintiff has categorically failed to introduce any evidence showing that it is entitled to summary judgment, and because the request is procedurally deficient, this Court should deny Plaintiff’s request for judgment.

CONCLUSION

For the foregoing reasons, Plaintiff’s Motion to Confirm Appraisal should be denied. Westchester respectfully requests that the Court reinstate an updated timeline for discovery, in line with Case Management and Scheduling Order dated May 6, 2024, to allow the parties to complete discovery and the disclosure of expert reports.

Dated: February 23, 2026

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By: /s/Isabella Stankowski-Booker

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**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

SUNLIGHT LANDS, LLC,)	
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Plaintiff,)	CIVIL ACTION NO.:
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v.)	
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WESTCHESTER SURPLUS LINES)	
INSURANCE COMPANY,)	
)	
Defendant.)	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 23, 2026, I electronically filed the foregoing document with the Clerk of Court using CM/ECF. I further certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service list in the manner specified, either via transmission of Notices of Electronic Filing or generated by CM/ECF or in some other authorized manner for those counsel of record or parties who may not receive electronically Notice of Electronic Filing.

/s/ Isabella Stankowski-Booker

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SERVICE LIST

Sunlight Lands, LLC v. Westchester Surplus Lines Ins. Co.

Case No.: 2:24-cv-00267

U.S. District Court, Middle District of Florida

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