UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

SUNLIGHT LANDS LLC,

Plaintiff, Case No.: 2:24-CV-00267-JES-KCD

v.

WESTCHESTER SURPLUS LINES INSURANCE COMPANY,

Defendants.
_____/

MOTION TO CONFIRM APPRAISAL AWARD AND FOR ENTRY OF PARTIAL SUMMARY JUDGMENT

COMES NOW the Plaintiff, Sunlight Lands LLC (hereinafter "Sunlight"), by and through its undersigned attorneys, and hereby files this Motion to Confirm Appraisal Award and Motion for Entry of Partial Summary Judgment, and in support thereof, states the following:

1. This is a two-count action: Petition to Enforce Appraisal and Complaint for Breach of Contract (i.e. the insurance policy) filed by Plaintiff, Sunlight, against its insurance carrier, Westchester Surplus Lines Insurance Company, (Westchester).
2. Plaintiff suffered a covered loss on September 28, 2022, as a result of damage caused by Hurricane Ian.

3. Defendant, Westchester inspected the property multiple times and eventually accepted coverage for the loss but only issued one claim payment totaling $27,955.54. *See ECF No. 36-1*.
4. On July 20, 2023, Plaintiff submitted an estimate for damages substantially higher than Westchester, totaling $218,956.14. Therefore, due to the difference between the parties' valuation on the amount of loss, Plaintiff also invoked the Appraisal provision from the insurance policy. *See ECF No. 36-2*.
5. On August 28, 2023, Defendant sent correspondence rejecting the appraisal demand as premature (claiming there was no disagreement, claiming damages were being sought for property not observed originally, and claiming coverage issues with the claim itself). The August 28, 2023 letter also rejected appraisal citing the insured's named appraiser was not "impartial" appraiser. *See ECF No. 36-3*. In addition, this letter requested receipts/invoices for repairs since Hurricane Ian and inspection reports; it is important to note, this letter was the *only* request for documents.
6. On September 15, 2023, Plaintiff made a second demand for appraisal, but this time named a second, impartial appraiser. *See ECF No. 36-4*. Despite the new, impartial appraiser for the insured, Westchester maintained its rejection of appraisal.

7. Throughout October 2023 and November 2023, Plaintiff corresponded and provided Westchester with additional documents which included inspection estimates as well as repair receipts/invoices responsive to Westchester's August 28, 2023. *See ECF No. 36-5*. Westchester still refused to proceed with appraisal.
8. Plaintiff even sought appraisal when it filed its Notice of Intent. *ECF No. 36-6*. In response, Westchester once again denied owing Plaintiff anything and again denied Plaintiff its contractual right to appraise the loss. *ECF No. 36-7*.
9. Due to Westchester's persistent delays and refusal to participate in appraisal, Plaintiff was forced to file suit. Plaintiff filed its Petition to Enforce Appraisal and Complaint for Breach of Contract in the Circuit Court of Lee County, Florida on February 23, 2024. The action was then removed from the Federal Court on March 22, 2024. (*ECF No. 1 and 7*).
10. Westchester Answered the lawsuit and raised several affirmative defenses. *ECF No. 11*.
11. Westchester asserted that "Plaintiff is not entitled to additional amounts from Westchester", "appraisal in this matter is premature", "and specifically denie[d] that Plaintiff is entitled to any relief from Westchester." *ECF No. 11, page 6*.
12. Additionally, Westchester raised several coverage defenses that would wholly deny Plaintiff any recovery, including allegations that Plaintiff breached the

contract by failing to comply with policy conditions and allegations that Plaintiff committed fraud and misrepresentations. *ECF No. 11, page 7-17*.

13. On May 22, 2024, Plaintiff was forced to file a Motion to Compel Appraisal. At the time of the pleading, Defendant had still failed to name its appraiser as required by policy provisions. (*ECF No. 36*).

14. On November 21, 2024, after an in-person evidentiary hearing, this Court entered an Order Granting Plaintiff's Motion to Compel (*ECF No. 69*). The Court then stayed the proceedings to facilitate appraisal. (*ECF No. 69, pg. 8*).

15. On December 8, 2025, the appraisal panel submitted a written Appraisal Award. *ECF No. 78-1*. The appraisal panel concluded $132,095.42 RCV/$125,560.67 ACV in covered damages for the dwelling and $5,325.00 RCV /$4,575 in covered damages for contents. Overall, the Appraisal Award concluded $137,420.42 RCV/ $130,135.67 ACV in covered damages.

16. On January 9, 2026, Westchester sent payment totaling $101,680.13. In addition, Westchester sent a correspondence breaking down the payment as such:

Dwelling and Contents Total (ACV)	$130,135.67
Less Prior Payment for Dwelling	($27,955.54)
Less $500 Deductible for Contents	($500.00)
Net ACV Amount Due	**$101,680.13**

See January 9, 2026 Letter and Settlement Check attached as Composite Exhibit "A."

MEMORANDUM OF LAW

In Three Palms Pointe v State Farm Fire and Casualty Company, 250 F. Supp. 2d 1357 (M.D. Fla. 2003) the court succinctly addressed the procedure employed by Florida courts in confirming an appraisal award.

> State Farm is correct that one difference between appraisal and arbitration decisions is that an arbitration decision determines the entire dispute and not just the amount of loss. This Court disagrees with State Farm that this somehow prevents confirmation of an appraisal award or somehow creates an "invalid judgment." Instead, the procedure that Florida courts use (and have seemingly used for more than the last 30 years) is to allow the insured to petition or move for confirmation of an appraisal award. Then, 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. (Citations omitted)
>
> Under this procedure, if the insurer fails to raise an affirmative defense or the insured defeats the defenses raised in a judicial proceeding, then a valid enforceable judgment is entered, and the appraisal award is confirmed**.** If the insurer is successful asserting its affirmative defense, then no judgment is entered. Nothing in this process creates an "invalid judgment" lacking liability.

Id. at 1362 (emphasis added).

Westchester answered the lawsuit, denied owing any additional amounts to Plaintiff for damages sustained from Hurricane Ian beyond its initial payment, and denied Plaintiff's request for appraisal. *See Defendant's Answer and Affirmative Defenses,*

ECF No. 11. However, Westchester has now waived all coverage defenses by fully and unconditionally paying the appraisal award, minus previous payments, applicable deductions, and depreciation. Therefore, Plaintiff is entitled to confirmation of the appraisal award. Three Palms Pointe, 250 F.Supp.2d at 1362.

CONFIRMATION IS APPROPRIATE AND PROPER IN THIS CASE

Given that Westchester has fully paid the appraisal award within the thirty (30) days as required by the "Loss Payment" section of the policy, it is anticipated that Westchester will argue that confirmation is unnecessary. Westchester will reason that paying the award prior to any confirmation or entry of a judgment, annuls any further legal consequence. However, the unconditional payment to resolve the disputed claim in this suit operates as the functional equivalent of a confession of judgment or verdict in Plaintiff's favor.

The instant motion is to confirm the appraisal award and enter a partial summary judgment in Plaintiff's favor. A motion for attorney fees is not before the Court. However, because the appellate courts have addressed the confirmation of appraisal awards in conjunction with the issue of attorney fees in a number of cases, Plaintiff does so here as well. Courts have applied the confession of judgment doctrine to appraisal proceedings.

In Travelers Indem. Ins. Co. v. Meadows MRI, LLP, 900 So.2d 676 (Fla. 4th

DCA 2005), the court ultimately held that an insured *can* recover attorney fees incurred during the appraisal process pursuant to §627.428. The *Travlers* case involved a claim for damage to an MRI imaging machine. The timeline for the case is important when assessing its similarity to the instant suit. In July 2001, Meadows suffered a loss regarding MRI equipment and notified Travelers, its insurer. From July 2001 to November 2001, Travelers engaged in a four-month long investigation to determine if there was a covered loss. In November 2001, Travelers acknowledged coverage for the loss and in December 2001 Travelers issued payment based on its valuation of loss. Id. at 677-78.

On May 20, 2002, Travelers demanded an appraisal pursuant to the terms of the policy of insurance. Thereafter, Meadows' counsel wrote Travelers and inquired about the appraisal procedure and availability of attorney fees under Fla. Stat. §627.428. Having not received an adequate response, on November 20, 2002, Meadows filed suit for declaratory relief. The appraisal required Travelers to make an additional payment to Meadows, which it did. From start to finish, the process, up until final payment, lasted one year and one day. Id.

The issue on appeal before the appellate court was whether the trial court should have confirmed the appraisal and entered a partial final judgment, which in

turn entitled Meadows to attorney fees under Fla. Stat. §627.428. Id. The Court held that the insured was entitled to attorney fees in conjunction with the appraisal, and the entry of an order confirming the appraisal award was appropriate. The Court found that (1) Meadows' involvement of the judicial system was not unnecessary and (2) Travelers' conduct was possibly affected by the filing of a lawsuit. The Court also stated that the goal of Fla. Stat. §627.428 is to place the insured in the position he would have been in if the insurer had **seasonably** paid the claim. Under the circumstances and facts of the case, the Court found the hiring of legal counsel as both necessary and compensable. Id. at 678-79.

In the instant case, Plaintiff, Sunlight, was not seasonably paid. Plaintiff patiently waited several months for Westchester to complete its inspections and properly adjust the claim. Eventually, Westchester accepted the claim, opened coverage, however it had only issued claim payments totaling $27,955.54. In response, Plaintiff submitted a number of estimates, photographs, and repair invoices, showing the true scope of the loss sustained. Importantly, included amongst the many submissions, was the public adjuster estimate totaling $218,956.14. In addition, Plaintiff twice sent written demands for appraisal of the claim under the policy. (*EMC 69, at pg. 2*). Understandably frustrated with the over-year long delay, Plaintiff was forced to file the instant suit (Petition to Compel Appraisla and for

Breach of Contract) and prosecute the subsequent Motion to Compel Appraisal to compel Westchester to comply with its own appraisal provision. (*EMC 36*). Plaintiff's actions resulted in an order granting its Motion to Compel Appraisal (ECF 69), final appraisal valuation of the covered damages of $137,420.42 RCV/ $130,135.67 ACV which Westchester denied post-suit, and payment of $101,680.13 without any release. Litigation was the necessary catalyst which allowed Plaintiff to proceed with appraisal and recover the benefits for the covered damages to which it was entitled which were wrongfully denied prior to instituting this action.

Here, Plaintiff satisfies the standard set forth in Meadows. In the present case, there was a complete breakdown of the adjusting process as Westchester incorrectly denied the full scope of benefits and incorrectly denied Plaintiff's appraisal request. Then Westchester reaffirmed its denial of benefits and denial of the appraisal process despite supplemental submission of evidence for the claim in its entirety. Lastly, Westchester refused to participate in appraisal even after Plaintiff invoked its right to appraisal, multiple times before and after suit. All avenues to keep the claim progressing were exhausted long before suit was filed. Of great importance, even after suit was filed, Plaintiff was forced to seek further judicial intervention, via Plaintiff's Motion to Compel Appraisal, to enforce Plaintiff's right to appraisal. Ultimately, Plaintiff prevailed, compelled Westchester to appraisal, and recovered a

substantial sum as a consequence of the appraisal. Overall, Plaintiff was compelled to do something to obtain policy benefits Both appraisal itself and over $100,000 in claim payments). The filing of suit was not only appropriate, but the record confirms the filing of the suit was necessary and affected the outcome to Plaintiff's advantage.

PARTIAL SUMMARY JUDGMENT

1. Summary Judgment Standard

The Court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact, and the movant is entitled to judgment as a matter of law. *See* Fla. R. Civ. P. 1.510(a)(2021). The interpretation of an insurance contract is a matter of law, and therefore summary judgment is a proper vehicle for establishing a policy's provisions. *Sandron Corp. v. Utica Mut Ins. Co., 360 So.2d 477* (Fla. 3rd DCA 1978). The movant has the burden of informing the Court of the basis for the motion and identifying the parts of the record, including pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, which it believes demonstrates the absence of a genuine issue of material fact. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986) The moving party can meet this burden by pointing out an absence of evidence in support of the nonmoving party's case. *Id.* at 325. This burden can also be met by producing evidence negating an essential element of the nonmoving

party's case, or by showing that the nonmoving party does not have enough evidence of an essential element of its claim to carry its ultimate burden of persuasion at trial. *See Bedford v. Doe*, 880 F.3d 993, 996 (8th Cir. 2018). Notably, the initial burden on the moving party under the new summary judgment standard has been noted to be "far from stringent," and "regularly discharged with ease." *Id.*

Once the party moving for summary judgment satisfies this initial burden, the nonmoving party must respond by submitting evidentiary materials of specific facts showing the presence of a genuine issue for trial. *Bedford*, 880 F.3d at 997. Unlike the previous standard in Florida, the new standard requires the nonmoving party to raise more than "some metaphysical doubt" about the material facts, and the nonmoving party cannot rest on mere denials or allegations. *Id*. Rather, the nonmoving party must present enough evidence that a jury could reasonably find in their favor. *Id*.

The new standard in Florida is akin to a directed verdict, in that the trial judge must direct a verdict if, under the governing law, there can be but one reasonable conclusion as to the verdict. See *Celotex*, 447 U.S. at 323, citing *Anderson v. Liberty Lobby, Inc.* 477 U.S. 242, 250 (1986). Or in other words, a genuine issue of material fact exists only where, "the evidence is such that a reasonable jury could return a verdict for the non-moving party." *Id.*

2. Defendant's Incorrect Denial of Benefits Followed by an Unconditional Payment in Favor of the Insured is Sufficient to Constitute a Confession of Judgment

Defendant rejected Plaintiff's multiple, repeated demands for appraisal before and after filing the pending lawsuit.

> When an insurance policy contains an appraisal provision, like here, the right to appraisal is not permissive but mandatory. So once a demand for appraisal is made, "neither party has the right to deny that demand." *United Cmty. Ins. Co. v. Lewis*, 642 So. 2d 59, 60 (Fla. Dist. Ct. App. 1994); *see also Cincinnati Ins. Co. v. Cannon Ranch Partners, Inc.*, 162 So. 3d 140, 143 (Fla. Dist. Ct. App. 2014) ("[W]hen the insurer admits that there is a covered loss, any dispute on the amount of loss suffered is appropriate for appraisal.")

ECF No. 69, page 5.

Despite the foregoing, Plaintiff was required to file a lawsuit (Petition to Enforce Appraisal and Breach of Contract), file multiple Motions to Compel Appraisal, and conduct an in-person evidentiary hearing before Defendant was ordered to honor the terms of the contract and proceed with appraisal.

These undisputed facts and the outcome of the Motion to Compel Appraisal is sufficient to entitle Plaintiff to judgment on both the Petition to Enforce Appraisal count as well as the Breach of Contract count.

In responding to the lawsuit, Defendant denied owing Plaintiff any monetary recovery, continued to refuse to appraise the loss, and specifically denied Plaintiff's

entitlement "to any relief from Westchester". *ECF No. 11*. Defendant also raised several affirmative defenses which served as complete bars to recovery (including post loss compliance and fraud/misrepresentation).

Defendant's denials were proven wrong when the Court ordered Westchester to appraise the loss. And Defendant abandoned its affirmative defenses by unilaterally and unconditionally paying $101,680.13 earlier this month. *See Exhibit "A"*.

A related, but distinct, ground for confirming the appraisal and entering judgment arose when Westchester issued the payment for the appraisal award. The unconditional payment tendered to Plaintiff to resolve the disputed claim, which in suit, operated as the functional equivalent of a confession of judgment or verdict in Plaintiff's favor.

In Ivey v. Allstate Ins. Co., 774 So. 2d 679 (Fla. 2000), the Florida Supreme Court addressed the issue of whether attorney's fees were owed to the insured's attorney pursuant to section §627.428, Florida Statutes, where the insurance company had made payments to the insured after suit was filed but before judgment was rendered. The Florida Supreme Court stated, simply, that "Allstate's payment after suit was filed operates as a confession of judgment …." Id at 684. The Florida Supreme Court, in reaching its decision in Ivey, relied upon its prior decision in Wollard v. Lloyd's & Companies of Lloyd's, 439 So. 2d 217 (Fla. 1983). The Florida

Supreme Court ruled "payment of the claim is, indeed, the functional equivalent of a confession of judgment or verdict in favor of the insured …." Id. at 218. Wollard's claim was settled on the eve of trial. Id. Where an insurance company paid its insured's claim after suit was filed, the Fourth District Court of Appeal echoed Wollard in quoting, "When an insurance company has agreed to settle a disputed case, it has in effect, declined to defend its position in the pending suit. Thus, payment of the claim is, indeed, the functional equivalent of a confession of judgment or a verdict in favor of the insured." United Auto. Ins. Co. v. Zulma, 661 So. 2d 947, 948 (Fla. 4th DCA 1995). S*ee also* Magnetic Imaging Sys. v. Prudential Property & Casualty Ins. Co., 847 So. 2d 987, 989- 90 (Fla. 3d DCA 2003) (after suit was filed, insurance company moved to compel arbitration but paid claim before arbitration award was entered and such payment operated as a confession of judgment.)

Just as the insurer did in Ivey, Westchester made a payment after suit was filed and without any type of settlement agreement. The payment Westchester tendered was unconditional, unilateral, and was not the result of a negotiated settlement agreement. More importantly, Westchester conceded error in its prior denials, abandoned the defenses previously plead and defended, and tendered payment in lieu of continuing litigation. A confession of judgment occurs "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 Fla. Ins. Co. v. Lorenzo, 969 So. 2d 393, 397 (Fla. 5th DCA 2007). In further discussing the confession of judgment doctrine as it relates to section §627.428, the Fifth District stated:

> The confession of judgment doctrine turns on the policy underlying section 627.428: discouraging insurers from contesting valid claims and reimbursing insureds for attorney's fees when they must sue to receive the benefits owed to them. Pepper's Steel & Alloys, Inc. v. United States, 850 So. 2d 462, 465 (Fla. 2003). This 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. *See, e.g.*, Ivey v. Allstate Ins. Co., 774 So. 2d 679, 684 (Fla. 2000); Palmer v. Fortune Ins. Co., 776 So. 2d 1019, 1021 (Fla. 5th DCA 2001); U.S. Sec. Ins. Co. v. LaPour, 617 So. 2d 347, 348 (Fla. 3d DCA 1993). However, courts generally do not apply the doctrine where the insureds were not forced to sue to receive benefits; applying the doctrine would encourage unnecessary litigation by rewarding a race to the courthouse for attorney's fees even where the insurer was complying with its obligations under the policy.

Id at 397-98.

Here the suit initiated by Plaintiff was necessary. For over a year, Plaintiff and Westchester exchanged correspondence in which Westchester outright refused Plaintiff's numerous invocations of appraisal rights under the policy to appraise all damages. It was clear that the adjusting process had completely broken down and

Plaintiff was not receiving what it was entitled to under the terms of the policy. Plaintiff was forced to initiate suit.

Further still, after suit, Westchester refused to proceed with Plaintiff's invocation of the appraisal condition. Westchester's stance forced Plaintiff to seek judicial determination to compel appraisal and Plaintiff prevailed. It was only then that Westchester was forced to adhere to the terms of its own policy and appraisal was finally able to proceed.

Plaintiff prevailed in its endeavor to compel appraisal and to recover benefits for covered damages for which it was entitled when the appraisal panel entered its Appraisal Award for $137,420.42 RCV/ $130,135.67 ACV, a stark contrast from Westchester's initial position that its payment of $27,955.54 was reflective of the total covered damages of the claim in its entirety. Over three (3) years from the date of loss, Westchester abandoned its defenses, declined to continue litigating, and tendered payment for the covered damages in the amount that the appraisal panel indicated the Plaintiff was entitled to under the terms of the policy. Therefore, Westchester's payment to Plaintiff constitutes a confession of judgment by an insurer for which partial summary judgment should be entered.

If the Court does not find that the facts and circumstances merit entry of judgment in Plaintiff's favor, in the alternative, Plaintiff is still entitled to a trial on

the breach of contract count. At this juncture, the Court has before it - Plaintiff's instant motion, Motion to Confirm Appraisal Award and Motion for Entry of Partial Summary Judgment. The court has two options: (1) confirm the appraisal and enter a judgment in light of Westchester's failure to establish a valid affirmative defense in the manner set forth in Three Palms Point v. State Farm Fire & Cas. Co., 250 F.Supp.2d 1357 (M.D.FL. 2003), aff'd 362 F.3d 1317 (11th Cir. 2004); or (2) if the court does not believe there is already unequivocal record evidence to support a judgment against Westchester, allow Plaintiff its day in court to prove that Westchester breached its contract with Plaintiff before a jury.

Westchester may argue that payment of the appraisal award removes any necessity to continue litigation. However, the unconditional payment of the appraisal award does not cure Westchester's breach of contract. An appraisal, unlike arbitration, decides damages, not liability. At a minimum, Plaintiffs are entitled to prove the breach and, if successful, recover nominal damages resulting from the breach of contract.

Nominal damages are awardable whether or not there are any actual damages resulting from a breach of contract. Indian River Colony Club v. Schopke Const., 619 So.2d 6 (Fla. 5th DCA 1993). Nominal damages are awardable where a legal wrong has been proven but Plaintiff has suffered no actual damages. Continuum

Condominium Ass'n., Inc. v. Continuum IV, Inc., 549 So.2d 1125 (Fla. 3d DCA 1989); Young v. Johnson, 475 So.2d 1309 (Fla. 1st CA 1985). Nominal damages are also available when a contract has been breached, but for some reason recoverable damages have not been proven. Zayle Corp. v. Creech, 497 So.2d 706 (Fla. 4th DCA 1986).

Since Plaintiff has filed a well-plead complaint for breach of contract, which remains at issue, Plaintiff is entitled to a trial on the breach of contract claim if the case is not resolved by the Court's entry of judgment in its favor. Westchester should not be able to avoid liability for breach of contract by the simple expedience of paying the appraisal award. Otherwise, there is an incentive for an insurer to breach a contract by wrongfully refusing to pay a claim and then invoking appraisal as a shield when sued.

In Jerkins v. USF&G Specialty Ins. Co., 2008 WL 678667, (5th DCA 2008), the Fifth District Court of Appeals reversed the trial court's denial of attorney's fees under Fla. Sta. §627.428 after an insured filed suit and recovered additional sums of money following an appraisal:

> "Section 627.428 was intended `to discourage the contesting of valid claims against insurance companies and to reimburse successful insureds for their attorney's fees when they are compelled to defend or sue to enforce their insurance contracts.'" Progressive Express Ins. Co. v. Schultz, 948 So. 2d 1027, 1029-

> 30 (Fla. 5th DCA 2007) (*quoting* Ins. Co. of N. Am. v. Lexow, 602 So. 2d 528, 531 (Fla. 1992)). To further this purpose, Florida courts have held that "[a]n insurer will owe attorney's fees to its insured where coverage is disputed and the insured prevails whether by judgment or a confession of judgment." First Floridian Auto & Home Ins. Co. v. Myrick, 969 So. 2d 1121, 1124 (Fla. 2d DCA 2007); *see also* Ivey v. Allstate Ins. Co., 774 So. 2d 679 (Fla. 2000); Wollard v. Lloyd's & Cos. of Lloyd's, 439 So. 2d 217 (Fla. 1983).

Jerkins, 2008 WL 678667 at *2.

Generally, "[p]ayment made after a suit is filed operates as a confession of judgment." Jerkins, 2008 WL 678667 at *2 *quoting* Myrick, 969 So. 2d at 1124. In Cincinnati Insurance Co. v. Palmer, 297 So. 2d 96 (Fla. 4th DCA 1974), the Fourth District Court explained:

> [I]t is neither reasonable nor just that an insurer can avoid liability for statutory attorney's fees by the simple expedient of paying the insurance proceeds to the insured or the beneficiary at some point after suit is filed but before final judgment is entered, thereby making unnecessary the entry of a judgment.... We think the statute must be construed to authorize the award of an attorney's fee to an insured or beneficiary under a policy or contract of insurance who brings suit against the insurer after the loss is payable even though technically no judgment for the loss claimed is thereafter entered favorable to the insured or beneficiary due to the insurer voluntarily paying the loss before such judgment can be rendered. After all, such voluntary payment by the insurer is the equivalent of a confession of judgment against it.

Id. at 99 (citations omitted).

The Fifth District adopted the Fourth District's reasoning Gibson v. Walker, 380 So. 2d 531 (Fla. 5th DCA 1980), holding that the statutory obligation for attorney's fees under section §627.428 "cannot be avoided simply by paying the policy proceeds after suit is filed but before a judgment is actually entered because to so construe the statute would do violence to its purpose, which is to discourage litigation and encourage prompt disposition of valid insurance claims without litigation." Id. at 533.

CONCLUSION

In the instant case, Plaintiff, Sunlight was forced to file suit to enforce appraisal and for breach of contract against Westchester, Defendant. Plaintiff was forced to obtain an order of the Court requiring Westchester to comply with its own policy by appraising the disputed claim. Westchester's refusal to participate in appraisal as well as its incorrect denial of claim payments are two distinct and independent grounds for partial summary judgment.

WHEREFORE, Plaintiff, Sunlight Lands LLC, moves this Court to enter an Order confirming the Appraisal Award entered in this matter, and to issue partial summary judgment in the amount of the Appraisal Award together with prejudgment interest,[1] reserving jurisdiction as for the determination of entitlement and amount

[1] Interest is owed per Fla. Stat. § 627.70131(5)(a).

of attorney's fees, costs, and as to such other and further proceedings and relief as this Court may deem just and appropriate under the circumstances.

January 19, 2026

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served electronically via email on this 19th day of January 2026, to:

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