<<COURT\_NAME>>

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| <<PROVIDER\_SUITNAME>>,  a/a/o <<INJUREDPARTY\_NAME>>    Plaintiff,  vs.  <<INSURANCECOMPANY\_SUITNAME>>  Defendant.  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_/ | Case No. <<INDEXORAAA\_NUMBER>> |

**PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT**

**AND INCORPORATED MEMORANDUM OF LAW**

COMES NOW, Plaintiff, <<PROVIDER\_SUITNAME>> A/A/O <<INJUREDPARTY\_NAME>> (hereinafter referred to as the “Plaintiff”), by and through undersigned counsel and pursuant to Florida Rule of Civil Procedure 1.510, hereby files this Motion for Summary Judgment and Incorporated Memorandum of Law. In support thereof, Plaintiff respectfully states as follows:

**INTRODUCTION**

This is an action for breach of contract to recover damages for Plaintiff, whose Assignor, <<INJUREDPARTY\_NAME>> (hereinafter the “Insured”), was the named insured under an all-risks homeowner’s insurance policy issued by Defendant under policy number <<POLICY\_NUMBER>> (hereinafter the “Policy”). *A copy of the Policy is attached hereto as****Exhibit “A.”***

On or about <<ACCIDENT\_DATE>>, while the Policy was in full force and effect, the Insured’s property, located at <<INJUREDPARTY\_FULL\_ADDRESS>> (hereinafter the “Property”), sustained physical damages (hereinafter the “Loss”). *A true and correct copy of Plaintiff’s Affidavit in Support and attached Exhibits is attached hereto as****Exhibit “B*.”** Following the Loss, the Insured and Plaintiff properly executed a written assignment of benefits for services to be rendered by Plaintiff in the form of replacement of the roof of the Property. *A true and correct copy of the Assignment of Benefits is attached hereto as****Exhibit “C.”***

The Loss was promptly reported to the Defendant who acknowledged the Loss and assigned it claim number <<INS\_CLAIM\_NUMBER>>. Subsequent to Defendant’s investigation of the loss, Defendant denied coverage over the loss and refused to pay Plaintiff’s invoice for services rendered.

The Policy issued by Defendant to the Insured is an all-risks policy. An all-risks policy provides coverage for "all losses not resulting from misconduct or fraud unless the policy contains a specific provision expressly excluding the loss from coverage." *Mejia v. Citizens Prop. Ins. Corp.*, 161 So. 3d 576, 578 (Fla. Dist. Ct. App. 2014). In the instant case, Defendant has not provided any evidence to support their contention that the damages to the property were caused by a peril excluded under the Policy. Defendant breached the Policy by denying coverage for the covered Loss and failing to pay all benefits due and owing which Plaintiff is entitled to under the Policy and pursuant to the assignment of benefits.

**SUMMARY OF THE ARGUMENT**

In the instant case, Insured’s property sustained physical damage during the Policy coverage period. Once an insured establishes the existence of a loss, “the burden shifts to the insurer to prove that the cause of the loss was excluded from coverage under the policy's terms.” *Deshazior v. Safepoint Ins. Co.*, 305 So. 3d 752, 755 (Fla. 3d DCA 2020). Additionally, “when an insurer relies on an exclusion to deny coverage, it has the burden of demonstrating that the allegations of the complaint are cast solely and entirely within the policy exclusion and are subject to no other reasonable interpretation.” *Id*. Here, the Loss should be covered under the Defendant's "all-risk" policy unless the Defendant is able to demonstrate through presentation of competent record evidence that the damage to the property was the result of a source/cause that is specifically excluded under the Policy. Thus, since Plaintiff has met its *prima facie* burden to establish that the Loss occurred during a period in which the damaged Property had insurance coverage and there is no evidence in the record to suggest that the damage to the Insured’s Property was caused by an excluded peril under the Policy, Plaintiff is entitled to summary judgment.

**STANDARD OF REVIEW**

Summary judgment is appropriate where there is no genuine factual dispute. Fla. R. Civ. P. 1.510.

The newly amended Fla. R. Civ. P. 1.510 provides, in part:

**Rule 1.510. Summary Judgment**

1. Motion for Summary Judgment or Partial Summary Judgment. A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. 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. The court shall state on the record the reasons for granting or denying the motion. *The summary judgment standard provided for in this rule shall be construed and applied in accordance with the federal summary judgment standard.*

(emphasis added).

In accordance with the federal rules, the correct test for the existence of a genuine factual dispute is no longer “the slightest doubt” being raised by the nonmovant, but rather, whether “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *In re: Amendments to Florida Rule of Civil Procedure* 1.510., No. SC20-1490, 2021 Fla. LEXIS 682, at \*11 (Apr. 29, 2021) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 2510 (1986)).

Thus, it will no longer be plausible to maintain that "the existence of any competent evidence creating an issue of fact, however credible or incredible, substantial or trivial, stops the inquiry and precludes summary judgment, so long as the 'slightest doubt' is raised." *Id.* (quoting Bruce J. Berman & Peter D. Webster, *Berman's Florida Civil Procedure* § 1.510:5 (2020 ed.)).

Additionally, in ruling on a motion for summary judgment, “[t]he determination of whether a given factual dispute requires submission to a jury must be guided by the substantive evidentiary standards that apply to the case.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255, 106 S. Ct. 2505, 2514 (1986). Simply put, the only touchstone that accurately measures whether there exists a genuine issue of material fact is the substantive evidentiary burden of proof that each party bears at trial. “[I]f the nonmoving party must prove X to prevail [at trial], the moving party at summary judgment can either produce evidence that X is not so or point out that the nonmoving party lacks the evidence to prove X.” *Bedford v. Doe*, 880 F.3d 993, 996-97 (8th Cir. 2018). “A movant for summary judgment need not set forth evidence when the nonmovant bears the burden of persuasion at trial.” *Wease v. Ocwen Loan Servicing, L.L.C.*, 915 F.3d 987, 997 (5th Cir. 2019).

**ARGUMENT AND MEMORANDUM OF LAW**

**I.** **THE PLAINTIFF HAS MET ITS *PRIMA FACIE* BURDEN TO ESTABLISH THAT A LOSS OCCURRED DURING THE POLICY COVERAGE PERIOD AND DEFENDANT HAS PROVIDED NO RECORD EVIDENCE TO ESTABLISH THAT THE LOSS WAS CAUSED BY AN EXCLUDED PERIL UNDER THE POLICY**

Plaintiff has met its burden to establish that the Loss occurred within the Policy coverage period under the all-risks Policy and Defendant has failed to provide evidence that the Loss is excluded under the terms of the Policy and thus, Plaintiff is entitled to summary judgment.

It is undisputed that the contract entered into between Defendant and the Insured is an all-risks Policy. An all-risk policy provides "a special type of coverage extending to risks not usually covered under other insurance" and coverage is available for all loss not resulting from the insured's willful misconduct or fraud unless the policy contains a specific provision expressly excluding the loss from coverage." *Phoenix Ins. Co. v. Branch*, 234 So.2d 396, 398 (Fla. 4th DCA 1970). The Fourth District in *Jones v. Federated Nat'l Ins. Co.*, 235 So. 3d 936 (Fla. 4th DCA 2018) set out the proper allocation of the shifting burden of proof in the context of an all-risk insurance contract:

1. The insured has the initial burden of proof to establish that the damage at issue occurred during a period in which the damaged property had insurance coverage. If the insured fails to meet this burden, judgment shall be entered in favor of the insurer.

2. If the insured's initial burden is met, the burden of proof shifts to the insurer to establish that (a) there was a sole cause of the loss, or (b) in cases where there was more than one cause, there was an "efficient proximate cause" of the loss.

3. If the insurer meets the burden of proof under either 2.(a) or 2.(b), it must then establish that this sole or efficient proximate cause was excluded from coverage by the terms of the insurance policy. If the insurer does so, then judgment shall be entered in its favor. If the insurer establishes that there was a sole or efficient proximate cause, but fails to prove that this cause was excluded by the all-risk insurance policy, then judgment shall be entered in favor of the insured.

4. If the insurer fails to establish either a sole or efficient proximate cause, and there are no applicable anti-concurrent cause provisions, then the concurrent cause doctrine must be utilized. Applying the concurrent cause doctrine, the insurer has the initial burden of production to present evidence that an excluded risk was a contributing cause of the damage. If it fails to satisfy this burden of production, judgment shall be entered in favor of the insured.

5. If the insurer does produce evidence that an excluded risk was a concurrent cause of the loss, then the burden of production shifts to the insured to present evidence that an allegedly covered risk was a concurrent cause of the loss at issue. If the insured fails to satisfy this burden of production, judgment shall be entered in favor of the insurer.

6. If the insured produces evidence of a covered concurrent cause, the insurer bears the burden of proof to establish that the insured's purported concurrent cause was either (a) not a concurrent cause (i.e., it had no (or a de minimis) causal role in the loss), or (b) excluded from coverage by the insurance policy. If the insurer fails to satisfy this burden of proof, judgment shall be entered in favor of the insured.

*Id*. at 941-942.

Simply put, Plaintiff’s initial burden is a showing of a direct physical loss to property during the policy period. Here, the Property suffered a loss on or about <<ACCIDENT\_DATE>>. See Exhibit B. At the time of the Loss, the Property was insured by Defendant. Defendant has presented no evidence to support its contention that the damages were the result of an excluded peril or that some other exclusion applies to this claim.

Thus, in accordance with *Jones v. Federated Nat'l Ins. Co.*, 235 So. 3d 936 (Fla. 4th DCA 2018), Plaintiff has met its initial burden of proof to establish that the Loss occurred during a period in which the Property had insurance coverage while Defendant has failed to establish that the Loss is excluded from under the terms of the Policy. For the foregoing reasons, Plaintiff respectfully requests that this Court enter summary judgment in the Plaintiff’s favor.

**CONCLUSION**

This Court should grant this Motion for Summary Judgment as Plaintiff has met its *prima facie* burden to establish that a loss occurred during the Policy coverage period and Defendant has failed to provide any evidence that the Loss is excluded under the terms of the Policy. The Defendant's Policy is an "all-risks" policy that provides coverage for any and all direct physical loss to property, unless otherwise excluded by the policy terms and conditions. Once Plaintiff has established that a loss appears to be within the terms of the all-risk policy, the burden is on the Defendant to demonstrate that the loss was caused by an excluded risk. Based on the foregoing, Plaintiff has presented sufficient evidence to establish that the Loss occurred during the Policy coverage period. Given that Defendant has presented no evidence in the record to suggest that the Loss was caused by an excluded peril under the Policy, Plaintiff is entitled to summary judgment.

WHEREFORE, Plaintiff, <<PROVIDER\_SUITNAME>> A/A/O <<INJUREDPARTY\_NAME>>, respectfully requests that this Honorable Court grant its Motion for Summary Judgment and enter summary judgment in its favor as to coverage and damages and for any other relief this Court deems just and proper.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served to Defense Counsel via the Florida E-File Portal on July 18, 2021.

Respectfully Submitted,

**Florida Insurance Law Group, LLC**

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Line chart

Description automatically generated with medium confidence

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