<<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 CONFESSION OF JUDGMENT AND MOTION TO DETERMINE REASONABLE ATTORNEY'S FEES AND TAXABLE COSTS

**COMES NOW,** Plaintiff, <<PROVIDER\_SUITNAME>>by and through undersigned counsel, hereby files this Motion for Confession of Judgment and Motion for Entitlement to Reasonable Attorney’s Fees and Costs, to be imposed against the Defendant, <<INSURANCECOMPANY\_SUITNAME>>, and as grounds therefore states as follows:

1. This lawsuit arises from a claim for damages to real property in connection with a covered loss under claim number, <<INS\_CLAIM\_NUMBER>>, that occurred on <<ACCIDENT\_DATE>> at the Insured, Jeffrey Walsh’s property located at <<INJUREDPARTY\_FULL\_ADDRESS>>.
2. On <<ACCIDENT\_DATE>>, following the loss the Insured, <<INJUREDPARTY\_NAME>>, executed an assignment of benefits to the Plaintiff in exchange for services meant to mitigate against further damage. *A true and correct copy of the Assignment of Benefits is attached hereto as Exhibit A.*
3. April 30, 2020, Plaintiff put Defendant on notice of their assignment of benefits.
4. On March 30, 2021, Plaintiff in compliance with Florida Statute 627.7152 served the Defendant with a 10-day Notice of Intention to Initiate Litigation.
5. On April 28, 2021, Plaintiff filed this action for breach of contract after Defendant failed to issue payment.
6. On May 5, 2021, Defendant was served with this lawsuit.
7. On October 4, 2021, Plaintiff received a correspondence dated October 1, 2021 from Defendant’s counsel attaching payment for the full amount of the invoice attached to Plaintiff’s Statement of Claim.
8. Plaintiff has not been paid the statutorily mandated interest or attorney fees and costs.
9. Defendant’s payment constitutes a confession of judgment under Florida law by issuing payment after this lawsuit was filed.

**MEMORANDUM OF LAW**

1. **FLORIDA STATUTE 627.70131**

Pursuant to Florida Statute 627.70131, any payment by the Defendant made after 90 days has expired from the date notice of a claim or supplemental claim accrues interest at the rates set forth in Florida Statute 55.03.

Florida State 627.70131(5)(a) states in part:

(5)(a) Within 90 days after an insurer receives notice of an initial, reopened, or supplemental property insurance claim from a policyholder, the insurer shall pay or deny such claim or a portion of the claim unless the failure to pay is caused by factors beyond the control of the insurer which reasonably prevent such payment. **Any payment of an initial or supplemental claim or portion of such claim made 90 days after the insurer receives notice of the claim, or made more than 15 days after there are no longer factors beyond the control of the insurer which reasonably prevented such payment, whichever is later, bears interest** at the rate set forth in s. [**55.03**](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0000-0099/0055/Sections/0055.03.html). Interest begins to accrue from the date the insurer receives notice of the claim. (emphasis added)

In this matter, payment was received after Plaintiff had already sent a demand letter, filed suit and served the Defendant. As such, Plaintiff is entitled to interest from the Defendant.

1. **FLORIDA STATUTE 627.7152**

Pursuant to Florida Statute 627.7152(1)(e) defines judgment as:

“Judgment obtained” means damages recovered, if any, but does not include any amount awarded for attorney fees, costs, or interest.

Pursuant to Florida Statute 627.7152(10)(a)(3) Plaintiff is entitled to attorney fees and costs in this matter.

1. **CONFESSION OF JUDGMENT**

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, the payment of the claim is, indeed, the functional equivalent of a confession of judgment or a verdict in favor of the insured. United Automobile Insurance Co. v. Zulma, 661 So.2d 947 (Fla. 4th DCA 1995) *citing* Wollard v. Lloyd’s & Companies of Lloyd’s, 439 So.2d 217, 218 (Fla. 1983)

In this case the Defendant paid the benefits subsequent to the filing of the lawsuit thereby relinquishing all of its defenses and confessed judgment in favor of Plaintiff.

Under these circumstances “a trial court has no discretion to deny reasonable attorney’s fee to the prevailing plaintiff where the insurance company first disputes the claim and then settles the case after a lawsuit is filed.” [Amador v. Latin American Property and Casualty Insurance Company, 552 So.2d 1132 (Fla. 3d DCA 1989)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1989145002&pubNum=0000735&originatingDoc=Id2b44c2009da11e580f3d2d5f43c7970&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)); [Losicco v. Aetna Casualty & Surety Company, 588 So.2d 681 (Fla. 3d DCA 1991)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1991186430&pubNum=0000735&originatingDoc=Id2b44c2009da11e580f3d2d5f43c7970&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)).

**WHEREFORE,** Plaintiff respectfully request this Honorable Court grant this Motion for Confession of Judgment and Order Plaintiffs entitlement to reasonable attorney’s fees, taxable costs, and interest, with the amount to be determined at a separate hearing, and for such other relief as the Court deems appropriate under the circumstances.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 19, 2022 a true and correct copy of the foregoing was served upon the Defendant via the Florida E-file Portal.

**Florida Insurance Law Group, LLC**

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Tel. (305) 906-4262

Logo, company name

Description automatically generated

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