<<COURT\_NAME>>

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

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**MOTION TO DETERMINE WITNESS FEE**

**COMES NOW,** Plaintiff, <<PROVIDER\_SUITNAME>> a/a/o <<INJUREDPARTY\_NAME>>, by and through the undersigned counsel, pursuant to the Florida Rules of Civil Procedure, hereby files this Motion to Set Reasonable Expert Fee and Date for Deposition, and as grounds therefore, states:

1. Defendant has designated [EXPERT NAME], as an expert in this matter.
2. Defendant has informed Plaintiff that [EXPERT NAME] is not available for deposition until [ENTER DATE].
3. Defendant has informed Plaintiff that [EXPERT NAME] charges [ENTER AMOUNT] per hour for deposition.
4. Florida Rule of Civil Procedure 1.390(c) permits the Court to determine a reasonable amount for an expert witness' deposition fee. It provides, in pertinent part:

“An expert or skilled witness whose deposition is taken shall be allowed a witness fee in such reasonable amount as the court may determine...All parties and the deponent shall be served with notice of any hearing to determine the fee.”

1. The deposition fee set by Defendant’s expert, [EXPERT NAME], is exorbitant and should be reduced to a reasonable amount.
2. This Court has authority pursuant to Rules 1.280(c) and 1.390 (c), Fla. R. Civ. P., to determine what would be a reasonable witness fee. As noted by the Fourth District Court of Appeal:

We are well aware of the escalating costs of litigation and that trial counsel often is caught in the dilemma of either paying the large fee demanded by an expert or proceeding to trial without the benefit of the expert's testimony. Nevertheless, attorney's as well as the court have an obligation to keep the costs of litigation within reasonable bounds. Loftin v. Anderson, 66 So.2d 470 (Fla. 1953). It follows that while the trial court has broad discretion in the taxing costs, the exercise of this discretion should be compatible with the goal of keeping costs within reasonable bounds. Crane v. Stultz, 136 So.2d 253 (Fla. 4th DCA 1978).

1. The Florida rule requiring a discovering party to pay an expert witness their fee is modeled after the federal rule. *Compare* [Fla. R. Civ. P. 1.280(b)(5)(C)](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1005170&cite=FLSTRCPR1.280&originatingDoc=I671c5250068011e88338c2a2b93e47e8&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search))[1](https://1.next.westlaw.com/Document/I671c5250068011e88338c2a2b93e47e8/View/FullText.html?navigationPath=Search%2Fv1%2Fresults%2Fnavigation%2Fi0ad74011000001736e4e0afeb6ac0d3e%3FNav%3DPMM%26fragmentIdentifier%3DI671c5250068011e88338c2a2b93e47e8%26parentRank%3D0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=0a25583dae989232a1735a0756cd673a&list=PMM&rank=24&sessionScopeId=1bdc357ee1d95061506a87b7ff42a35ea95a8a6d36e893c7e491e1131b267f03&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_tablefootnoteblock_1) *with* [Fed. R. Civ. P. 26(b)(4)(E)(i)](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000600&cite=USFRCPR26&originatingDoc=I671c5250068011e88338c2a2b93e47e8&refType=RB&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_f4ef000095e57)[2](https://1.next.westlaw.com/Document/I671c5250068011e88338c2a2b93e47e8/View/FullText.html?navigationPath=Search%2Fv1%2Fresults%2Fnavigation%2Fi0ad74011000001736e4e0afeb6ac0d3e%3FNav%3DPMM%26fragmentIdentifier%3DI671c5250068011e88338c2a2b93e47e8%26parentRank%3D0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=0a25583dae989232a1735a0756cd673a&list=PMM&rank=24&sessionScopeId=1bdc357ee1d95061506a87b7ff42a35ea95a8a6d36e893c7e491e1131b267f03&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_tablefootnoteblock_2). Because these rules are nearly verbatim identical, the Court may consider federal cases interpreting the federal rule. [*Smith v. Fla. Power and Light,* 632 So. 2d 696, 698 n.3 (Fla. 3d DCA 1994)](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1994056311&pubNum=0000735&originatingDoc=I671c5250068011e88338c2a2b93e47e8&refType=RP&fi=co_pp_sp_735_698&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_735_698) (where the Florida rule of civil procedure resembles the federal rule, “district courts of appeal may look to federal case law for guidance”).

It is Defendant's burden to prove that the requested fee is reasonable. *[Mannarino v. U.S.,](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2003762740&pubNum=0000344&originatingDoc=I671c5250068011e88338c2a2b93e47e8&refType=RP&fi=co_pp_sp_344_374&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)" \l "co_pp_sp_344_374)*[218 F.R.D. 372, 374 (E.D.N.Y. 2003)](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2003762740&pubNum=0000344&originatingDoc=I671c5250068011e88338c2a2b93e47e8&refType=RP&fi=co_pp_sp_344_374&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_344_374) (“[t]he party seeking reimbursement of deposition fees bears the burden of proving reasonableness”). In order to determine whether a party has met its burden of proving reasonableness of the fee, Federal cases have identified seven factors which a court may consider. These factors are:

1. the witness's area of expertise;

2. the education and training that are required to provide the expert insight that is sought;

3. the prevailing rates for other comparably respected available experts;

4. the nature, quality, and complexity of the discovery responses provided;

5. the cost of living in the particular geographic area;

6. the fee actually being charged by the expert to the party who retained him; and

7. fees traditionally charged by the expert on related matters.

*E.g., Mannarino* at 374 (formatted for clarity).

When the seven factors identified in *Mannarino* are applied to the facts now before the Court (i.e. before the deposition of [EXPERT NAME]), [his/her] fee is simply not reasonable.

1. Plaintiff further contends that [EXPERT NAME] should sit for deposition within the next 60 days.

**WHEREFORE**, for the foregoing reasons, Plaintiff, <<PROVIDER\_SUITNAME>> a/a/o <<INJUREDPARTY\_NAME>>, respectfully request this Honorable Court grant this motion in its entirety.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on ­­­­­­­­­­­­­February 19, 2022, a true and correct copy of the foregoing was filed and served on the Defendat through the Florida E-File Portal.

**Florida Insurance Law Group, LLC**

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