

Florida Court Puts the Claim of Landlord's Insurer In The No-Fly Zone

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In *United States Aviation Underwriters v. Turnberry Airport Holdings, LLC*, No. 3D22-270, 2023 Fla. App. LEXIS 1207 (U.S. Aviation), the Court of Appeal of Florida, Third District (Appellate Court) considered whether the insurer for a commercial landlord could pursue subrogation against the landlord's tenant. Based on the terms of the lease between the landlord and the tenant, the Appellate Court held that the landlord's insurer could not pursue subrogation.

In *U.S. Aviation*, the defendant, Turnberry Airport Holdings, LLC (Turnberry Airport) leased space to an insured aircraft owner. The lease contained the following provision:

TENANT agrees that all policies of insurance obtained by it in connection with the Space or as required hereunder shall contain appropriate waiver of subrogation clauses.

As required by the lease, the tenant secured a policy that expressly waived subrogation as to Turnberry Airport. The insurance policy stated: "The 'Rights against third parties' section of your policy shall not apply to Turnberry Airport Holdings, LLC"

After the aircraft owner's plane sustained damage when a fire suppression system in the hanger went off, the insured filed a claim with its insurer. The insurer paid the claim and filed a subrogation action against Turnberry Airport.

The trial court granted summary judgment against the insurer and the Appellate Court affirmed the holding. The Appellate Court did not expressly address the language of the lease. However, the court found that the language of the policy was unambiguous. Thus, the Appellate Court affirmed the trial court.

U.S. Aviation serves as a reminder that even if courts do not apply the Sutton Doctrine – and treat a tenant as an implied co-insured on its landlord's property insurance policy – the language of the lease and/or the policy itself may still waive subrogation. Therefore, before considering whether to pursue subrogation against a tenant, subrogation professionals should carefully review the language of both the lease and the policy to determine whether the language of either precludes subrogation.

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