

IN THE SUPREME COURT OF FLORIDA

CASE NO.: SC2023-0586

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ON APPEAL FROM THE THIRD DISTRICT COURT OF APPEAL  
OF FLORIDA  
L.T. CASE NO.: 3D22-270

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UNITED STATES AVIATION UNDERWRITERS, INC.,  
AS MANAGER OF UNITED STATES AIRCRAFT INSURANCE GROUP,  
AND AS SUBROGEE OF EXECUTIVE SKYFLEET

Petitioner,  
v.

TURNBERRY AIRPORT HOLDINGS, LLC  
d/b/a FONTAINEBLEAU AVIATION,

Respondent.

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**RESPONDENT'S ANSWER BRIEF ON JURISDICTION**

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## **STATEMENT OF THE ISSUES**

Petitioner, United States Aviation Underwriters, Inc., as Manager of United States Aircraft Insurance Group, and as Subrogee of Executive Skyfleet (“Petitioner”), seeks discretionary review by this Court, under Article V, Section 3(b)(3) of the Florida Constitution, of the opinion issued by the Third District Court of Appeal (“Third District Court”) affirming the trial court’s entry of final summary judgment in favor of Respondent, Turnberry Airport Holdings, LLC d/b/a Fontainebleau Aviation (“Respondent”). Based on well-established contract law, the Third District Court found that the insurance policy issued by Petitioner to Executive Skyfleet contained a clear and unambiguous waiver of subrogation as to Respondent. (See Petitioner’s Appendix (“App”) at 5).

The initial issue before this Court is whether the Third District Court’s opinion expressly and directly conflicts with the opinion issued by the Second District Court of Appeal (“Second District Court”) in *U.S. Fire Ins. Co. v. ADT Security Services, Inc.*, 134 So. 3d 477, 480 (Fla. 2d DCA 2013) *review denied*, 151 So. 3d 1223 (Fla. 2014), finding that an alleged tort action which is independent of any breach of contract is not barred by the independent tort doctrine or economic loss rule.

Should this Court determine that it has discretionary jurisdiction, then the second issue is whether this Court should exercise its jurisdiction.

Should this Court accept jurisdiction and proceed to merits briefing, Respondent intends to brief each of the following grounds raised in and adopted by the trial court in entry of final summary judgment in Respondent's favor: (1) Petitioner's action was barred by application of Florida's anti-subrogation rule as Respondent was an insured under the insurance policy issued by Petitioner; (2) Petitioner's right of subrogation was expressly waived by the unambiguous terms of the hangar lease; and (3) Petitioner's causes of action are barred by the independent tort doctrine as they are not independent of the hangar lease.

## **STATEMENT OF THE CASE AND FACTS**

### **I. Facts Stated in the Third District Court's Opinion**

Respondent leased aircraft hangar space at the Miami-Opa Locka Executive Airport to Executive Skyfleet, an insured aircraft owner. (App. at 4). The lease expressly stated that "TENANT and LANDLORD release each other and waive any right of recovery against each other for loss or damage . . ." and "TENANT agrees that all policies of insurance obtained in connection with the Space or as required hereunder shall contain appropriate waiver of subrogation clauses." (App. at 5). Accordingly, the

insurance policy procured by the insured [Executive Skyfleet] expressly waived subrogation as to Respondent, as follows: “The Rights against third parties’ section of your policy shall not apply to Turnberry Airport Holdings, LLC [Respondent] . . . .” (App. at 5).

Thereafter, the insured aircraft was damaged when the hangar’s fire suppression system activated inside the hangar. (App. at 4). The insured [Executive Skyfleet] filed an insurance claim with its insurer, represented by Petitioner. (*Id.*). Petitioner paid the claim and then filed this insurance subrogation action against Respondent. (*Id.*).

**II. Petitioner’s Statement Of Facts Includes Allegations Not In The Third District Court Of Appeal’s Opinion And Not Supported By Record Evidence**

The only facts relevant to this Court’s determination on the issue of jurisdiction are those contained in the Third District Court’s opinion as stated in Section I above. To the extent Petitioner’s Brief on Jurisdiction recites additional alleged and unproven “facts” beyond the four corners of the Third District Court’s opinion, those “facts” are irrelevant and should be disregarded by the Court in determining whether conflict jurisdiction exists. See *Reaves v. State*, 485 So. 2d 829, 830 n.3 (Fla. 1986) (“The only facts relevant to our decision to accept or reject such [jurisdictional] petitions are those facts contained within the four corners of the decisions allegedly in

conflict . . . we are not permitted to base our conflict jurisdiction on a review of the record . . . [T]hus, it is pointless and misleading to include a comprehensive recitation of facts not appearing in the decision below . . .”).

For example, none of the following alleged “facts” in Petitioner’s brief are relevant here, nor are any of these purported “facts” supported by the record or otherwise established by competent record evidence: (1) During this time, Turnberry knew its Foam System was malfunctioning and knew or should have known that it was in a poor state of repair. (Petitioner’s Brief at 4, citing to the Complaint); (2) Turnberry also knew that a malfunction could cause grave damage to the aircraft stored inside its hangars. (*Id.*); (3) Turnberry never advised Executive that the Foam System was malfunctioning or that its hangar was unsafe. (*Id.*); (4) The Incident was caused by a malfunction in the Foam System of which Turnberry was aware prior to the Hangar Lease. (Petitioner’s Brief at 5, citing to the Complaint); and (5) At the time the parties entered into the Hangar Lease, Turnberry knew that the Foam Systems has not and was not being repaired. (R., Pg. 884, citing a Work Order).<sup>1</sup>

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<sup>1</sup> The cited Work Order actually shows that *repairs were performed* and that the “System [is] Normal.” (Record on Appeal (“R.”) at 884).

Additionally, Petitioner states that Executive Skyfleet “would not have continued to store its Aircraft in the Hangar or entered into the Hangar Lease had it also known the true state of the Foam System.” (Petitioner’s Brief at 5). Petitioner, however, failed to inform this Court that, even after the Subject Incident and after Petitioner commenced this action, Executive Skyfleet entered into a new Hangar Lease with Respondent to store the Subject Aircraft in Respondent’s aircraft hangar. (R., at 919, Deposition testimony of George Kontos, owner of Executive Skyfleet, at P. 134, Ln. 8 to P. 136, Ln. 25).

### **III. Statement of the Case**

On January 13, 2022, the trial court entered a final summary judgment in favor of Respondent based on the following grounds asserted in Respondent’s Motion for Summary Judgment: (1) Petitioner’s insurance subrogation action was barred by the policy’s waiver of subrogation provision in favor of Respondent; (2) Petitioner’s insurance subrogation action was barred by Florida’s common law anti-subrogation rule as Respondent was an insured under Petitioner’s insurance policy; (3) Petitioner’s action was barred by the expressed terms of the hangar lease between the Executive Skyfleet and Respondent; and (4) Petitioner’s alleged misrepresentations by Respondent did not give rise to an independent tort that is separate and

distinct from any breach of the lease – application of the independent tort doctrine. (R. 1802-06; 603-811).

On February 22, 2023, the Third District Court affirmed the trial court’s final summary judgment against Petitioner finding that the insurance policy’s waiver of subrogation clause expressly waived Petitioner’s right of subrogation as to Respondent. (App. at 3-5). The Third District Court’s opinion did not address the Respondent’s other arguments that were a part of the trial court’s final judgment, including the application of the independent tort doctrine. (*Id.*).<sup>2</sup>

On March 9, 2023, Petitioner filed a motion for certification requesting an order certifying that the district court’s decision conflicted with *U.S. Fire Insurance Co. v. ADT Security Services, Inc.*, 134 So. 3d 477 (Fla. 2d DCA 2013), or, alternatively, certifying that it involved a question of great public importance. The Third District Court denied Petitioner’s motion without an opinion or citation.

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<sup>2</sup> Petitioner’s argument set forth in its Jurisdiction Brief that the Third District Court’s decision expanded the application of the insurance policy’s provision beyond the express terms of the waiver of subrogation clause was **not** briefed by Petitioner, and thus, such argument was waived.

## **ARGUMENT**

### **I. THE FLORIDA CONSTITUTION PROVIDES THIS COURT WITH LIMITED DISCRETIONARY JURISDICTION TO REVIEW DECISIONS BY THE DISTRICT COURTS OF APPEAL**

The jurisdiction of the Florida Supreme Court is established and limited under Article V, Section 3(b) of the Florida Constitution. Because the Third District Court denied Petitioner’s motion for certification, this Court’s jurisdiction to review the Third District Court’s decision depends on whether it *actually* “expressly and directly” conflicts with the Second District Court’s decision in *U.S. Fire Ins. Co. See State v. Vickery*, 961 So. 2d 309, 312 (Fla. 2007) (“[W]hen a district court does not certify the conflict, our jurisdiction to review the case depends on whether the decision actually ‘expressly and directly’ conflicts with the decision of another court.”).

### **II. THIRD DISTRICT COURT’S DECISION DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH *U.S. FIRE INS. CO.***

#### **A. Standard of Review**

In *Wheeler v. State*, 296 So. 3d 895, 896 (Fla. 2020), this Court explained that the basis for conflict jurisdiction must be “expressed” within the four corners of the district court’s decision itself, and the opinion must contain a statement or citation effectively establishing a point of law upon which the decision rests. (citing *Florida Star v. B.J.F.*, 530 So. 2d 286, 287 (Fla. 1988)). Because the conflict between decisions must be within the four

corners of the decisions in order to be “express and direct,” the record itself cannot be used to establish conflict jurisdiction under Article V, Section 3(b)(3) of the Florida Constitution. See *Reaves*, 485 So. 2d at 830 (Fla. 1986).

**B. The Court Does Not Have Conflict Discretionary Jurisdiction in This Case**

The Third District Court’s opinion was expressly based on the following established contract law, as stated in *Arguelles v. Citizens Prop. Ins. Co.*, 278 So. 3d 108, 111 (Fla. 3d DCA 2019); “[W]hen the language of an insurance policy is clear and unambiguous, a court must interpret it according to its plain meaning, giving effect to the policy as it was written.” quoting *E. Fla. Hauling, Inc. v. Lexington Ins. Co.*, 913 So. 2d 673, 676 (Fla. 3d DCA 2005) (App. at 5). In applying well-established contract law, the Third District Court found that Petitioner’s insurance policy issued to its insured [Executive Skyfleet] contained clear and unambiguous language that expressly waived Petitioner’s right of subrogation as to Respondent, affirming the trial court’s entry of final summary judgment in favor of Respondent. (*Id.*).

In contrast, in *U.S. Fire Ins. Co.*, the Second District Court’s expressed statement of law was that an alleged tort cause of action which is independent of any breach of contract is not barred by the independent tort

doctrine or economic loss rule. 134 So. 3d at 480 (citing *HDT, Ltd. v. Lineas Aereas Costarricenses, S.A.*, 685 So. 2d 1238, 1239 (Fla. 1996) (recognizing that intentional or negligent acts which are independent of the contract can give rise to a tort action; in that case, fraudulent inducement)). In applying that principle of law to the particular facts alleged in the complaint in that case, the Second District Court reversed the trial court's granting of the defendant, ADT Security Services, Inc.'s motion for judgment on the pleadings by finding that, based on the pleadings, plaintiff had alleged a legally sufficient cause of action that was independent of any breach of contract. (*Id.* at 480).

This case is also factually distinguishable from *U.S. Fire Ins. Co.* Unlike Respondent, defendant [ADT Security Services] was not an insured under U.S. Fire Ins. Co.'s policy. Unlike Respondent, the U.S. Fire Ins. Co.'s policy did not contain a waiver of subrogation in favor of ADT Security Services. Unlike in this case, Second District Court did not address whether the U.S. Fire Ins. Co.'s policy expressly waived subrogation as to ADT Security Services.

In sum, the Third District Court's decision does not expressly and directly conflict with the Second District Court's decision in *U.S. Fire Ins. Co.*

**C. The Court Should Decline To Exercise Discretionary Jurisdiction In This Case For Other Reasons**

Should this Court determine that conflict jurisdiction exists, this Court should decline to exercise its discretionary jurisdiction for two (2) additional reasons.

First, the issue of whether a tort claim is independent and extraneous to the contract or interwoven and inseparably embodied in the parties' agreement is one that must be determined on a case-by-case analysis. Courts recognize that one cannot merely look at the label placed on a claim by that attorney but rather must evaluate the substance of the claim as almost any contract claim can be framed as a fraud in the inducement action. *See Puff 'N Stuff of Winter Park , Inc. v. Bell*, 683 So. 2d 1176, 1179-80 (Fla. 5th DCA 1996); *see also Hotels of Key Largo, Inc. v. RHI Hotels, Inc.*, 694 So. 2d 74, 77 (Fla. 3d DCA 1997) (declining to accept the defendant's position that one can avoid the economic loss rule by merely pleading fraud in the inducement finding a "critical distinction must be made where the alleged fraudulent misrepresentations are inseparably embodied in the parties' subsequent agreement."). As this Court recognized in *HDT, Ltd.*, a distinction must be drawn between fraud extraneous to the contract and fraud interwoven with the breach of contract, with the latter not giving rise to an independent cause of action in tort. 685 So. 2d at 1240 (agreeing with the

explanation provided by the court in *Huron Tool & Engineering Co. v. Precision Consulting Services, Inc.*, 209 Mich. App. 365, 532 N.W. 2d 541, 545 (1995)).

Thus, this Court will need to review the record on appeal, address not only the application of the independent tort doctrine, but also the other various grounds on which the trial court based its entry of final summary judgment, to determine whether the trial court and district court were correct, or reached the correct result but possibly for the wrong reason, or whether a reversal is warranted.<sup>3</sup> In sum, this Court's decision's precedential value is tied to the particular facts of this case, rendering "conflict" review all the more unnecessary.

Second, because the Third District Court's opinion did not address the underlying causes of action, precedential value of the district court's decision is limited to a well-established legal contract interpretation principle that clear and unambiguous language in a contract should be interpreted according to its plain meaning, giving effect to the contract as written. The district court's opinion has no precedential value concerning the application of the

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<sup>3</sup> See, *Dade County School Bd. v. Radio Station WQBA*, 731 So. 2d 638, 645 n.8 (Fla. 1999) (court recognizing the tipsy coachman doctrine that allows an appellate court to affirm where the court reaches the right result, but for the wrong reasons so long as there is any basis which would support the judgment in the record).

independent tort doctrine as the court did not address whether Petitioner's alleged tort claims were barred by the hangar lease between Executive Skyfleet and Respondent. Without discussing that point of law, the district court's opinion cannot be cited as standing for a legal proposition that provisions in a contract, which was a product of (purported) fraudulent inducement, can bar a tort claim for acts which are independent of any breach of the contract and for this reason as well, does not conflict with *U.S. Fire Ins. Co.*

### **CONCLUSION**

WHEREFORE, for the foregoing reasons, Respondent respectfully requests that this Court decline to exercise discretionary jurisdiction in this case and dismiss Petitioner's petition for review.

Respectfully submitted,

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