

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO.: 2021-015089- CA- 01 (43)

MANUEL DREZNER, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

CHAMPLAIN TOWERS SOUTH CONDOMINIUM
ASSOCIATION INC.,

Defendants.

**NOTICE OF FILING UNIVERSAL PROPERTY & CASUALTY INSURANCE
COMPANY'S LIMITED OBJECTION TO THE ALLOCATION SETTLEMENT
AGREEMENT**

Universal Property & Casualty Insurance Company (hereinafter referred to as "Universal")
by and through undersigned counsel, and hereby gives notice of the filing the attached Limited
Objection to the Allocation Settlement Agreement.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been electronically
uploaded via Florida e-filing portal, which served a copy of same to all counsel of record on March
23, 2022.

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**UNIVERSAL PROPERTY & CASUALTY INSURANCE COMPANY'S
LIMITED OBJECTION TO THE ALLOCATION SETTLEMENT AGREEMENT**

Universal Property & Casualty Insurance Company (hereinafter referred to as "Universal") by and through undersigned counsel, and hereby files this Limited Objection to the Allocation Settlement Agreement and gives notice of undersigned counsels' intent to appear at the March 30, 2022, hearing. In support of Universal's limited objections, Universal states as follows:

1. Universal has contractual Subrogation rights which allow it to recover amounts paid to its insureds. "When the insurer has made payment for the loss caused by a third party, it is only equitable and just that the insurer should be reimbursed for its payment to the insured." *Arch Ins. Co. v. Kubicki Draper, LLP*, 318 So. 3d 1249, 1250 (Fla. 2021).
2. Subrogation rights belong to the insurer and may not be waived by the insured unless the insurance contract gives the insured the right to do so. *See, e.g., Austin Indep. Sch. Dist. v. H. C. Beck Partners, Ltd.*, No. 03-07-00228-CV, 2009 Tex. App. LEXIS 1756, at *18 (Tex. App. Mar. 13, 2009); *Charter Oak Fire Ins. Co. v. B.J. Enters. of Miss., LLC*, 156 So. 3d 357 (Miss. App. 2014). Universal's contract with its insureds does not give the insured the right to waive or assign Universal's Subrogation rights.

3. Recital P improperly adjudicates Universal’s Subrogation rights and entitlement to collect from the common fund. In pertinent part, Recital P concludes: “...then an insurer who paid funds for personal property loss to a Participating Unit Owner would lack rights in, or the ability to exercise control over a Participating Unit Owner’s Individual Percentage Share in, the Common Fund.” The reasoning contained in Recital P, leading up to this conclusion, contains arguments of fact and law which must be properly adjudicated through a Motion for Summary Judgment or Trial.
4. Further, A party may not assign rights that it does not have. “An assignment conveys no greater right than the assignor had at the time of the assignment. “(*Allen v. Helms*, 293 So. 3d 572, 580 (Fla. 1st DCA 2020), citing *Union Indemnity Co. v. City of New Smyrna*, 100 Fla. 980, 130 So. 453 (Fla. 1930). Universal’s contract with its insured gives Universal the sole right to the proceeds realized from third parties paid to compensate insureds for property damage claims when those claims have been paid by Universal.
5. Section 3 (h) improperly assigns Unit Owner’s claims against third persons to the Receiver, including claims held by Universal. In pertinent part, Section 3 (h) states: “but otherwise assigned to the Receiver . . . all Participating unit Owners Property Damage Claims against third parties to be held and pursued by the Receiver for the benefit of the Receivership Estate, subject to further orders of the Court.”
6. Due process requires that Universal be given the opportunity to fully brief its position and offer evidence in support thereof. (*State ex rel. Phx. Tax Title Corp. v. Viney*, 120 Fla. 657, 663, 163 So. 57, 60 (1935).)¹ The rights of third parties may not be extinguished through a settlement agreement, even one given court approval. *Loc. No. 93, Int’l Asso. of Firefighters, etc. v. Cleveland*, 478 U.S. 501, 529, 106 S. Ct. 3063, 3079 (1986).

¹ “[No rights of . . . third parties should be adjudged to be affected, impaired or finally cut off by any order of court . . . unless such third parties have been . . . given an opportunity to fully and fairly present their claims *as parties* entitled to a full and fair hearing after the making up of definite issues to be tried.” (*State ex rel. Phoenix Tax Title Corp. v. Viney* (1935) 120 Fla. 657, 663 [163 So. 57, 60].)

7. Universal requests this Court to strike Recital P and the portion of Section 3(h) referenced above from the Allocation Settlement as those sections improperly adjudicate Universal's Subrogation rights and entitlement to collect from the Common Fund. An Allocation Agreement is not the appropriate avenue for the Receiver to make these conclusions which impair Universal's subrogation rights and remedies, nor is an Objection hearing an appropriate due process avenue for Universal to litigate its Action against, among others, the Association (Case No. 2021-015089-CA-01).

8. Universal certifies that it has met and conferred with the Receiver and his Counsel to try to resolve Universal's Limited Objection to the Allocation Agreement.

WHEREFORE, Universal Property & Casualty Insurance Company hereby requests this Court to Strike Recital P of the Allocation Settlement Agreement, or in the alternative provide Universal with an opportunity to fully brief its position and offer evidence in support thereof.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been electronically uploaded via Florida e-filing portal, which served a copy of same to all counsel of record on March 23, 2022.

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