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Great News Regarding Chapter 558 Defense Costs: The Supreme Court of Florida Ruled That Chapter 558 Is A "Suit" Under Standard Commercial General Liability Insurance Policies

Peckar & Abramson, P.C. is proud to represent the Appellant, Altman Contractors, Inc., in an appeal pending before the U.S. Court of Appeals for the Eleventh Circuit adverse to Crum & Forster Specialty Insurance Company. Today, December 14, 2017, and following oral arguments, the Florida Supreme Court held that the pre-suit notice of claim process under Chapter 558 of the Florida Statutes is a "suit" as defined by standard Commercial General Liability Insurance Policies, and thus, could require insurance companies to provide their insured contractors a defense through that process and prior to the commencement of formal litigation or arbitration.

As counsel for the insured general contractor, P&A argued that the attorneys' and consultants' fees incurred as a result of the Chapter 558 notice of claim should be paid by the insurance carrier as part of its duty to defend. Prior decisions by the Florida Supreme Court support this position, and having the insurance carrier's participation during the Chapter 558 process will promote the statute's stated policy of encouraging settlement and reducing litigation.

The insurance carrier argued, among other things, that since Chapter 558 is not a formal "lawsuit" or "arbitration", there is no duty to defend and that forcing insurers to pay defense costs will only serve to increase insurance premiums and complicate the Chapter 558 process.

The Eleventh Circuit certified the following question to the Florida Supreme Court, as they found it to be a matter of first impression that has not previously been decided by a Florida State Court: *Is the notice and repair process set forth in Chapter 558 of the Florida Statutes a "suit" within the meaning of the CGL policies issued by C&F to ACI?*

The Florida Supreme Court answered the foregoing question in the affirmative, finding that the Chapter 558 pre-suit process is an "alternative dispute resolution proceeding", as included in the policy's definition of "suit". Accordingly, per the Opinion, an insured will be entitled to defense costs for such an alternative dispute resolution proceeding when the insurer consents to the insured's participation. The Supreme Court did not address whether Crum & Forster consented, and thus, remanded that issue back to the Eleventh Circuit for further proceedings. Click HERE for the full Opinion. Note that the decision is not final until the time for rehearing expires.

Feel free to contact either Adam P. Handfinger (ahandfinger@pecklaw.com) or Meredith N. Reynolds (mreynolds@pecklaw.com) if you have any questions or would like additional information regarding this matter. They can be reached via e-mail, as indicated, or in Peckar & Abramson's Miami office via telephone at (305) 358-2600.

Peckar & Abramson would like to thank the Construction Association of South Florida, South Florida Association of General Contractors, Leading Builders of America and the law firms of Boyle & Leonard, P.A. and Ver Ploeg & Lumpkin, P.A. for their participation as *Amici Curiae* in support of Altman Contractors. Special thanks to Mark Boyle of Boyle & Leonard, P.A., who argued very persuasively before the Supreme Court of Florida, and to Christine Gudaitis of Ver Ploeg & Lumpkin, who argued very persuasively before the Eleventh Circuit, both in support of the *Amici Curiae*.