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Breaking News Regarding Chapter 558 Defense Costs: Eleventh Circuit Certifies The Question To The Supreme Court of Florida in Altman Contractors, Inc. v. Crum & Forster Specialty Insurance Company

The Federal Appellate Court that heard the issue of whether insurance carriers issuing policies of insurance in Florida are required to provide their insureds a defense from allegations of construction defects asserted through the pre-suit Chapter 558 process before the commencement of a formal lawsuit or arbitration proceeding saw the issue as unresolved by Florida law and took the extraordinary step of asking the Florida Supreme Court to determine how the law should apply under these circumstances.

On August 2, 2016, the Eleventh Circuit Court of Appeals certified the following question to the Florida Supreme 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?" If the Florida Supreme Court answers the question in the affirmative, the next step will be for the Federal District Court to determine the issue of damages and the amount to award the general contractor.

Peckar & Abramson, P.C. represents the Appellant general contractor and we view the submission of this question to the Florida Supreme Court as significant since the outcome of this appeal will have important implications for the construction industry.

As counsel for the insured general contractor, we argued that the attorney and consultant 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.

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, Inc. with special thanks to Christine Gudaitis of Ver Ploeg & Lumpkin, who argued very persuasively before the Eleventh Circuit in support of the *Amici Curiae*.