

In *Altman Contractors, Inc. v. Crum & Forster Specialty Ins. Co.*, 832 F.3d 1318 (11th Cir. 2016), the Eleventh Circuit certified the following question to the Florida Supreme Court: Is the notice-and-repair process set forth in Chapter 558, Florida Statutes, a "suit" within the meaning of the CGL policies issued by Crum & Forster to Altman Contractors? The Florida Supreme Court recently answered in the affirmative. *Altman Contractors, Inc. v. Crum & Forster Specialty Ins. Co.*, 232 So. 3d 273 (Fla. 2017).

Altman was the general contractor for a high-rise condominium. Crum & Forster (C&F) insured Altman. C&F's policies stated that it had the right and duty to defend against any "suit." The policy defined "suit" to mean a "civil proceeding," including an "arbitration proceeding" or "any other dispute resolution proceeding" that the insured submitted to with C&F's consent.

The condominium association served Altman with Chapter 558 notices of construction defect claims. Altman notified C&F and demanded a defense and indemnification. C&F denied it had a duty to defend, reasoning that the notices did not constitute a "suit." So Altman hired its own counsel. The condominium association then supplemented its notice with additional claims and demanded that Altman correct them. C&F maintained its position but retained counsel for Altman under a reservation of rights. Altman objected to the counsel, demanded its original counsel, and requested reimbursement of fees and expenses. C&F denied Altman's requests, Altman settled the claims without C&F's involvement, and then Altman sued in the Southern District of Florida seeking a declaration that C&F owed it a duty to defend and indemnify.



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Chapter 558 process … is a voluntary dispute resolution mechanism through which parties may resolve claims without filing suit.

The Southern District found the Chapter 558 process was not a "suit" under the policy. Therefore, the condominium's notices did not trigger a duty to defend. So the Court entered summary judgment for C&F. *Altman Contractors, Inc. v. Crum & Forster Specialty Ins. Co.*, 124 F. Supp. 3d 1272 (S.D. Fla. 2015). Altman appealed to the Eleventh Circuit, arguing that the Chapter 558 process is a "suit" because it is a "civil proceeding" or "proceeding," as defined by Black's Law Dictionary and Merriam-Webster's Dictionary, or otherwise constitutes an "alternative dispute resolution proceeding." The Eleventh Circuit certified the question above.

The Florida Supreme Court held that the Chapter 558 process is not a "civil proceeding" under the policy because it is a voluntary dispute resolution mechanism through which parties may resolve claims without filing suit. But it noted that C&F's policies broadened the definition of "suit" to include "[a]ny other alternative dispute resolution proceeding" and that Black's defines "alternative dispute resolution" as "[a] procedure for settling a dispute by means other than litigation." It held that Chapter 558 falls within that definition and, in doing, noted that the Florida Legislature described Chapter 558 as "[a]n effective alternative dispute resolution mechanism" in section 558.001, Florida Statutes.

Continued on page 53

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Continued from page 52

As a result, the Florida Supreme Court affirmatively answered the certified question, held that the Chapter 558 notice-and-repair process constitutes a "suit" under the C&F policy, and remanded the case to the Eleventh Circuit for further proceedings. The Eleventh Circuit recently reversed the Southern District's grant of summary judgment in C&F's favor, vacated the final judgment, and remanded the case to the Southern District for further proceedings. *Altman Contractors, Inc. v. Crum & Forster Specialty Ins. Co.*, No. 15-12816, 2018 WL 560523 (11th Cir. Jan. 26, 2018). Regardless of what happens on remand, Altman will have implications for all involved in construction disputes where CGL insurance is involved.



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Note: The Trial & Litigation Section article in the previous issue, entitled "PIP v. Mandatory BI: What's Necessary on Florida's Roads" had an incorrect author photo for Marc J. Semago. The photo has been corrected in the digital version of that issue, available online at www.hillsbar.com. We apologize for this error.

Trial & Litigation Section Luncheon

On December 14, the members of the Trial & Litigation Section received a fascinating presentation from Captain Jeffrey D. Grove with the 927th Air Refueling Wing at MacDill Air Force Base. Captain Grove discussed the work of the 927th Squadron and showed the audience mission footage of mid-air refueling.















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