

Altman Contractors, Inc. v. Crum and Forster Specialty Insurance Company

Year: 2016

Court: Florida Supreme Court

Case Number: SC-16-1420

The duty to defend is the most fundamental duty of a liability insurer. The duty to defend is broader than the duty to indemnify. On certified question from the 11th Circuit Court of Appeals, the Florida Supreme Court was asked to address whether the notice to repair procedure under Fl. Stat. sec. 558 constitutes a “suit” under the terms of the CGL policy at issue. The 558 procedure, known as the construction defect statute, is a pre-litigation dispute resolution in which property owners send a notice to developers, contractors, and subcontractors when construction defect is suspected before litigation or arbitration. UP argued in its brief that such a notice triggers the insurer’s duty to defend (much like a 104(e) letter sent by the EPA to a PRP). In fact, CGL policies are marketed and sold to cover such proceedings. Because such proceedings are by nature adversarial, counsel can play a critical role in resolving claims without resorting to litigation. Surprisingly, the insurer here took the position that “lawyering up” for the 558 procedure would actually make the process more adversarial and it would be more likely the claim would proceed into litigation. UP pointed out the absurdity of this position and urged the court to reverse and find a duty to defend. UPdate 12/14/17: The Florida Supreme Court held that an insurer’s duty to defend may be triggered by a construction defect notice. The Court held that the 558 procedure was an “alternative dispute resolution” fitting the definition of “suit” in the CGL policy.

UP's brief was authored pro bono by Gregory D. Podolak, Esq. and Brian Clifford, Esq. of Saxe Doernberger and Vita, P.C. with assistance from UP Executive Director Amy Bach, Esq. and Staff Attorney Dan Wade, Esq.

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