>> ALL RISE!
>> THE SUPREME COURT OF FLORIDA
IS NOW IN SESSION.
PLEASE PROCEED.
>> BEFORE WE BEGIN, LET ME
ANNOUNCE WE HAVE THE HOUSE
STAGES, STAND PLEASE.
WELCOME.
ONE MORE CASE LEFT.
NEXT CASE ON THE DOCKET IS
ALTMAN CONTRACTORS, INC., V.
CRUM & FORSTER SPECIALTY
INSURANCE CO. WHENEVER YOU ARE
READY.
>> MAY IT PLEASE THE COURT, MY
NAME IS ADAM HAND AND I'M HERE
WITH MY COLLEAGUE, MISTER
REYNOLDS ON BEHALF OF THE
APPELLATE, ALTMAN CONTRACTORS.
WE ARE HERE ON A CERTIFIED
QUESTION FROM THE 11TH CIRCUIT,
NAMELY WHETHER THE NOTICE AND
REPAIR PROCESS DEFINED AND
OUTLINED IN CHAPTER 558
CONSTITUTES A SUIT UNDER THE
POLICIES OF INSURANCE ISSUED BY
CRUM AND FORSTER.
>> A FUNDAMENTAL QUESTION GOING
INTO THIS, I UNDERSTAND THIS
DISPUTE, IT IS TOTALLY AND
COMPLETELY SEPARATE FROM ANY
ISSUE OF COVERAGE UNDER THIS
POLICY.
>> THAT IS CORRECT.
WE ARE ONLY DEALING WITH DUTY TO
DEFEND FOR PURPOSES OF THIS
LAWSUIT.
>> I KNOW THE DUTY TO DEFEND IS
BROADER THAN THE COVERAGE BUT
WHEN YOU TALK ABOUT DUTY DEFEND,
IF IT IS ABSOLUTELY CLEAR THAT
IT IS PERSONAL INJURY AT THE
COME UNDER THIS STATUTE.
I AM CONCERNED ABOUT NOT
BROADENING COVERAGE IN A CASE
THAT HAS NOTHING TO DO WITH IT.
IT HAS NOTHING TO DO WITH NO ONE
TAKING A POSITION ON WHETHER IT
IS OR IS NOT COVERED BUT THESE
KINDS OF GOODS WITHIN THE

PROTECTION OF POLICY IF COVERED.
>> CRUM AND FORSTER SAID THEY DID NOT RAISE ANY THING, THIS IS A CONSTRUCTION DEFECT MATTER, THERE WERE ALLEGATIONS OF DAMAGE IN THE NOTICE THAT WOULD FALL IN COVERAGE OF THE POLICY.
>> TO ME WE HAVE 2 FIRST UNDERSTAND WHAT THE 558 PROCESS IS TO UNDERSTAND WHETHER IT IS A CIVIL PROCEEDING, WHETHER IT CAN OR CAN'T BE.
IN MEDICAL MALPRACTICE YOU HAVE TO PARTICIPATE, A NECESSARY REQUIREMENT, I DON'T KNOW THAT AN INSURER WHATEVER SAY THAT IS PART OF THE PROCEEDING.
HERE, WHAT WE ARE DEALING WITH IS CRUM & FORSTER SAYS IT IS ONLY ABOUT REPAIRS, NOT DAMAGE BUT THAT IS NOT TRUE BECAUSE YOU CAN HAVE MONETARY SETTLEMENT, BUT IN A SITUATION WHERE YOU HAVE GOT, IN THIS CASE, 98% OF WHAT WAS BEING COMPLAINED ABOUT THE CONTRACTOR WERE DEFECTS IN THE CONSTRUCTION, IF CRUM & FORSTER, YOU NOTIFIED THEM WHEN YOU GOT NOTICE BECAUSE THAT IS UNDER THE POLICY, YOU GOT TO DO THAT, 98% BE COVERED BECAUSE THEY ARE DEFECT NOT RESULT IN PROPERTY DAMAGE, IF THE INSURER HAS DUTY TO DEFEND DO THEY HAVE A DUTY TO DEFEND THE ENTIRE PURSUE PROCESS OR JUST THE SMALL PART THAT WOULD BE COVERED AND DOESN'T THAT MAN IN MOST CASES CREATE ALMOST A CONFLICT BETWEEN WHAT IS IN THE BEST INTEREST OF THE INSURED WHICH WOULD BE TO CORRECT THE DEFECTS VERSUS THE INSURER WHO GOES THIS PART OF THE PROPERTY DAMAGE IS NOTHING, WE DON'T SEE ANY LIABILITY FOR IT, YOU NEED TO NOT PARTICIPATE AND GO TO SUIT, PUTTING THE INSURED IN, THE 558 PROCEDURE IS THE THING THAT IS GETTING ME AS TO WHETHER THIS IS COVERED UNDER

THE POLICY.
THAT IS WHAT HAPPENED IN THIS CASE.
RESPONSE TO THE NATURE OF THAT PROCESS AND ISN'T IT MOSTLY TO GET THE CONTRACTOR TO REPAIR DEFECTS AS OPPOSED TO PURSUED IN THE TRADITIONAL SENSE?
>> GOOD QUESTIONS.
STARTING AT THE END WITH RESPECT TO THE FACT THAT ONLY SOME PORTION OF THE ALLEGATIONS IN THE 558 NOTICE IMPLICATED COVERAGE.
SOME ADMITTEDLY DID NOT THE ONLY ALLEGATIONS THAT IMPLICATED COVERAGE WHERE THOSE, SECONDARY ALLEGATION OF PROPERTY DAMAGE, A DAMAGED WINDOW CAUSING WATER AND DAMAGING CARPET AND DRYWALL, WOULD BE COVERED UNDER THE POLICY, NOT JUST A DETECTIVE WINDOW WITH NO PROPERTY WOULD NOT BE COVERED UNDER THE POLICY.
THIS IS NO DIFFERENT THAN A LOT OF SUBSEQUENT LAWSUITS THAT ARE FILED WHERE YOU HAVE SOME OF THE CLAIMS IMPLICATING COVERAGE AND SOME OF THE CLAIMS NOT AND THIS COURT HAS BEEN CLEAR AND IT IS UNDISPUTED, I THINK CRUM & FORSTER WOULD AGREE WHERE YOU HAVE A COMPLAINT WHERE SOME OF THE ALLEGATIONS MADE COVERAGE AND SOME DO NOT.
THE CARRIERS DEFEND THE ENTIRE CASE.
THEY CAN'T PICK AND CHOOSE THAT THEY WILL DEFEND YOU ON SOME ALLEGATIONS BUT NOT OTHERS BECAUSE AS YOU POINT OUT THAT WOULD CREATE A THIS INCENTIVE BETWEEN CARRIER AND --
>> IF THEY TOOK OVER THE FIRST CLAIM ONE OF THE OPTIONS IS NOT TO RESPOND.
COULD THE INSURER SAY WE ARE NOT -- WE THINK IT IS IN THE BEST INTEREST OF THE INSURED AND IS NOT RESPOND AND THEN IT GOES TO

THE LAWSUIT.
>> THAT GETS TO THE ISSUE OF WHETHER I 58 IS A VOLUNTARY PROCESS AND IN THE BRIEFING CRUM & FORSTER MAKES AN ARGUMENT THAT IT IS NOT ABOUT DAMAGES WHICH I THINK YOUR HONOR NOTES IS INCORRECT, DAMAGE IS A REFERENCE THROUGHOUT THE STATUTE, IT IS DEFINED BY 558 IS SEEKING DAMAGES.
IT IS NOT A SYMBIOTIC PROCESS TO FIX IT, BUT IT IS NOT VOLUNTARY. YOU HAVE VARIOUS POINTS IN THE STATUTE THAT SAYS THE CONTRACTOR SHOULD RESPOND, THE CONTRACTOR MUST DO THAT.
>> WHAT HAPPENS IF A CONTRACTOR OR RECIPIENT OR NOTICE OF CLAIM, FILE THIS AWAY.
WHAT ARE THE CONSEQUENCES OF THAT
>> CONSEQUENCES OF FAILING TO RESPOND WHEN THE TIME LIMITATIONS PAST THERE WAS A LAWSUIT FILED, FOR THE CLAIMANT NOT TO RESPOND, SANCTIONED IN LITIGATION TO RESPOND FOR THE RECOVERY REQUEST IN THE SAME WAY FOR FAILING TO RESPOND.
>> WHAT SECTION GIVES SANCTIONS?
>> I WAS UNDER THE IMPRESSION THAT THE ONLY SANCTION WAS NO SANCTION AT ALL, YOU COULDN'T PROCEED WITH THE LAWSUIT, YOU WOULD BE STATED UNTIL YOU GO THROUGH THE PROCESS TO BEGIN WITH.
IN THE LEGAL ACTION.
>> THE LAST PORTION --
>> 514.
>> THAT COMES IN IF YOU CHOOSE TO PARTICIPATE.
THE ISSUE, WHETHER THIS IS THE PROCEEDING THE PEN ON WHETHER THIS IS A INVENTORY PROCEDURE OR VOLUNTARY ONE.
>> I DON'T AGREE THIS IS A LITMUS TEST AND DON'T AGREE IT IS MANDATORY PROCEDURE.

>> MANDATORY FOR THE CLAIMANT TO NOTIFY BUT THE PART THAT IS HANGING ME UP IS NOT MANDATORY FOR THE CONTRACTOR TO PARTICIPATE.
>> RESPECTFULLY DISAGREE WITH THE SECOND PART OF YOUR STATEMENT THAT IT IS NOT MANDATORY FOR THE CONDUCT TO PARTICIPATE.
>> IF THEY DON'T RESPOND, IF THEY DON'T RESPOND, WHAT HAPPENS?
>> IF THEY DON'T RESPOND TO JUST THE NOTICE OF CLAIM UNDER 558 AS TIME ELAPSES, THEY WILL BE SUED BUT AT THE SAME TIME DURING THE COURSE OF THAT TIME RUNNING DOWN FOR THEM TO RESPOND TO THE CLAIMANT SERVES AS AN EXAMPLE, REQUEST FOR DOCUMENTS OF 558.00415 AND THEY DON'T RESPOND, THERE WILL BE SANCTIONS IMPOSED IN THE SUBSEQUENT LITIGATION.
>> YOU SHALL HAVE 20 MINUTES TO ARGUE TODAY, DOES THAT MEAN YOU HAVE TO STAND UP AND ARGUE OR CAN YOU SAY I AM WAVING MY ARGUMENT?
>> I DON'T HAVE THESE THE TIME ALLOTTED --
>> OF IT MANDATORY IF YOU ARE. IF I SAY YOU HAVE 20 MINUTES AS THE APPELLATE?
THAT IS AN INVITATION, YOU CAN USE IT OR NOT OR DECIDE YOU WANT TO WAVE IT.
>> IF YOU TOLD ME I WILL HAVE 20 MINUTES, IF YOU TELL ME I WILL STAND HERE FOR 20 MINUTES AND ARGUE I WILL BE HERE FOR 20 MINUTES ARGUING.
>> LET ME ASK YOU, IT IS NOT JUST A PROCEEDING BUT THE TERM IS A CIVIL PROCEEDING, IN THE CONTRACT, I AM LOOKING FOR THE COMMON USAGE OF THAT PHRASE CIVIL PROCEEDING, CORRECT?
AND THE 10TH EDITION OF THE

DICTIONARY HAS A DEFINITION OF
CIVIL PROCEEDING AND IF YOU USE
THAT IT REQUIRES A JUDICIAL
HEARING SESSION LAWSUIT, YOU
WOULD NOT -- THAT WOULD NOT --
THAT WOULD INDICATE WHATEVER
THIS PROCESS IS IS NOT A CIVIL
PROCEEDING IF YOU USE THAT
DEFINITION.
>> IF YOU USE SOLELY THAT
DEFINITION WHICH WAS NOT IN
EXISTENCE AT THE TIME OF THE
POLICY THAT DEFINITION CAME
ABOUT --
>> THIS IS NOT A STATUTE.
AREN'T DICTIONARIES PUT OUT
THERE WHEN THEY DO WHAT
HISTORICALLY IS THE COMMON
UNDERSTANDING OF A WORD.
MAYBE IT IS NOT ENOUGH ANYMORE
JUST TO DEFINE PROCEEDINGS,
THERE IS A PHRASE WITH ANOTHER
COMMON MEETING, LET'S INCLUDE
THAT, NOT THAT THEY ARE MAKING
IT UP AND THIS IS THE DEFINITION
GOING FORWARD, THAT REFLECTS
COMMON USAGE.
>> YES, BUT THE REALITY IS --
>> IS THERE ANYTHING IN WRITING
THAT WOULD INDICATE A DIFFERENT
COMMON USAGE BEFORE THE
DICTIONARY PUT THAT IN?
>> THIS DECISION IN RAYMOND
JAMES, RELYING AN EARLIER
ADDICTION OF BLACKS AND CURRENT
DEFINITIONS TO SAY IT IS A
SERIES OF STEPS, NOT CIVIL
PROCEEDING.
>> IT IS NOT AN EARLIER VERSION.
AND THERE MAY BE MULTIPLE COMMON
USES AND UNDERSTANDINGS, AND
CRUM & FORSTER CHOSE TO DEFINE
SUIT WITH THE PHRASE CIVIL
PROCEEDING.
CIVIL PROCEEDING IS NOT DEFINED.
THIS COURT HAS, WE CITE THE
CASES IN THE BRIEF, AND --
>> I WANT TO GO BACK TO SECTION
15 BECAUSE I DIDN'T FOCUS ON IT.
EVEN IF THEY CHOOSE NOT TO

PARTICIPATE, IF THEY ARE SERVED
WITH A WRITTEN REQUEST FOR
DOCUMENTS, THE CONTRACTOR
DOESN'T PRODUCE THE DOCUMENTS
AND THERE IS A SUBSEQUENT
LAWSUIT, THERE CAN BE SANCTIONS
FOR NOT PRODUCING THE DOCUMENTS.
>> WHERE I THINK WE ARE HAVING A
DISAGREEMENT ON THE PHRASEOLOGY
USED, THEY CHOOSE NOT TO
PARTICIPATE.
THIS IS A MANDATORY STATUTE,
UNDENIABLY MANDATORY FOR
CLAIMANT BECAUSE THEY HAVE TO GO
THROUGH THE TO FILE THE LAWSUIT
WAS THE PERSON YOU'RE ASKING IS
WHETHER IT IS MANDATORY FOR THE
RESPONDENTS.
WE DON'T THINK THAT IS THE
STANDARD BUT EVEN IF IT WAS YOU
CAN'T OPT OUT THIS.
YOU ARE GOING TO BE REQUIRED FOR
THE TERMS OF THE STATUTE TO
COMPLY WITH IT BY THE FACT YOU
BUILD A BUILDING IN THE STATE OF
FLORIDA.
>> YOU HAVE TO RESPOND TO
DISCOVERY.
I WANT TO KNOW THAT PART.
THAT IS IMPORTANT, THERE ARE
CONSEQUENCES IN THE LAWSUIT.
>> EVEN IF YOU DON'T RESPOND TO
THE NOTICE OF CLAIM AND CHOOSE
TO DEFAULT ON OBLIGATIONS TO
REAFFIRM THE BEST RESPONSE, YOU
CAN STILL BE SANCTIONS AND
LIKELY WOULD BE SANCTIONS FOR
FAILURE TO RESPOND TO DISCOVERY
WHICH WOULD LIKELY BE SERVED.
THIS AND SOMETHING YOU OPT OUT
OF, AND CANDIDLY I REPRESENT A
LOT OF CONTRACTORS, WE HAVE
NEVER NOT RESPONDED.
>> WHAT IF THERE WERE A PURSUIT
MEDIATION CONTRACTUAL
REQUIREMENTS?
AS THE CARRIER REQUIRED IN YOUR
VIEW TO RESPOND TO THAT IN THE
POLICY.
>> IF THERE WAS A CONTRACTUAL

OBLIGATION TO MEDIATE PRIOR TO
THE LAWSUIT --
>> DUTY TO DEFEND ON THAT?
>> IT IS A DEFINITION ON THE
POLICY DEFINITION REFERRING TO
ALTERNATIVE DISPUTE RESOLUTION
TO WHICH THE INSURED CONSENT
AGREES TO WITH THE CARRIER'S
CONSENT SO WE WOULD BE UNDER A
DIFFERENT PRONG BUT IF THERE WAS
A CONTRACTUAL MEDIATION
REQUIREMENT THE GARY WOULD HAVE
TO CONSENT TO THAT TO PROVIDE
DEFENSE BUT 558 DOESN'T EVER
MEDIATION REQUIREMENT, JUST AS
--
>> HYPOTHETICAL.
>> IT IS ALTERNATIVE DISPUTE
RESOLUTION SO UNDER THAT, IF YOU
SAY IT IS ALTERNATIVE DISPUTE
RESOLUTION, WITH THE INSURER
HAVE TO CONSENT?
>> IT IS ANOTHER GREAT QUESTION.
DEFINITION AND POLICY IS SHOWN
TO BE VERY BROAD AND WHAT IT
SAYS IS A SUIT IS A CIVIL
PROCEEDING AND IT INCLUDES A AND
B, ARBITRATION, YOU ALL KNOW
WHAT THAT IS AND BE SAYS ANY
OTHER ALTERNATIVE DISPUTE
RESOLUTION PROCEEDING THAT THE
INSURED AGREES TO PARTICIPATE IN
WITH OUR CONSENT ISN'T CLEAR AND
THERE IS AN ARGUMENT MADE IN
SOME OF THE COURT THAT THIS
PROCESS, THESE REPAIR PROCESSES
FALL UNDER THE CATEGORY OF THE
SECOND PRONG.
CALIFORNIA COURT REJECTED THAT
AND SAID THIS IS NOT ALTERNATIVE
TO LITIGATION, IT IS THE
BEGINNING OF LITIGATION.
TO HAVE IT FALL UNDER THAT --
>> THE STATUTE, IS IT AS
SKELETAL AS OURS?
>> IT IS A LITTLE MORE, HAS
ADDITIONAL REQUIREMENTS.
THERESA: -- CRUM & FORSTER
DISPUTED THE DISTINCTION, THE
MEDIA PARTICIPATORS IN THE

PROCESS.
IT IS NONBINDING BUT EVEN WITH THAT, THE CALIFORNIA COURT HELD THEIR STATUTE DIDN'T FALL UNDER CONCERNS.
THE CALIFORNIA STATUTE HAS THE PROVISION THAT IF NOTIFIED OF A SETTLEMENT CONFERENCE AND DON'T GO TO THE SETTLEMENT CONFERENCE AND PARTIES GET TOGETHER AND DECIDE ON A TOTAL DAMAGE NUMBER, YOU CAN'T DISPUTE THE TOTAL DAMAGE NUMBER BUT YOU CAN DISPUTE ALLOCATION.
BUT SUBCONTRACTOR, IF THEY AGREE THERE ARE MILLION DOLLARS FOR THE BUILDING, YOU CAN DISPUTE -- IS PRETTY MANDATORY IF YOU ARE BOUND BY AVERAGES.
>> ONLY BY SETTLEMENT.
>> IF YOU DON'T SHOW UP YOU ARE BOUND BY DAMAGES AGREED-UPON, THAT IS PRETTY MANDATORY IN MY BOOK.
>> YOU ARE BOUND BY A CERTAIN POINT BUT KEEP IN MIND WE ARE VERY FOCUSED WHETHER IT IS MANDATORY ON THE RESPONDENTS.
OPERATIVE DEFINITIONS PROMULGATED BY THIS COURT IN THAT RAYMOND JAMES IS OPERATIVE ARE GOING INTO COURT AND WE SPENT A LOT OF TIME BICKERING AND STEERING WHAT IS MEANT BY A PHRASE IN THE POLICY.
A PHRASE IN THE POLICY IS SUBJECT TO MORE THAN ONE REASONABLE INTERPRETATION OF EVEN IF YOU THINK THAT DEFINITION IS BETTER I KNOW MINE IS NOT UNREASONABLE.
WHEN A PHRASE IS SUBJECT TO MORE THAN ONE REASONABLE DEFINITION HE GOES TO THE INSURED AND I AM GETTING CLOSE TO MY TIME.
>> YOU ARE WAY OVER YOUR TIME BUT I WILL GIVE YOU TWO MINUTES FOR REBUTTAL.
>> MAY IT PLEASE THE COURT, 5 AND A.

>> YOU USE IT ALL UP.
I WILL GIVE YOU A COUPLE
MINUTES.
>> 15 MINUTES.
>> I AM REPRESENTING THE AMICUS
IN THIS CASE, THANK YOU FOR YOUR
PARTICIPATION IN THIS MATTER.
THIS IS AN IMPORTANT ISSUE FOR
THE DEVELOPER COMMUNITY.
I ASK THE COURT GIVEN TIME
LIMITATIONS TO FOCUS ON ONE
ISSUE WHICH IS THE VOLUNTARY
PAYMENT ISSUE, ALL THESE
POLICIES HAVE A VOLUNTARY
PAYMENT PROVISION WHICH IS
TRADITIONAL IN ALL MODERN FORMS
OF LIABILITY INSURANCE AND WHAT
THAT PROVISION PROVIDES IS ANY
SETTLEMENTS ENTERED INTO WITHOUT
CONSENT OF THE CARRIER ARE NOT
COVERED.
IF THE COURT INTERPRETS THE
POLICY IN A NARROW MANNER TO NOT
REQUIRE THE PARTICIPATION OF THE
CARRIERS IN THIS PROCESS, YOU
PUT THE INSURED IN A CONFLICT
POSITION.
IF WE SETTLE THESE CASES AND
CARRIERS ARE NOT PARTICIPATORY
AND SOME ELEMENT IS COVERED, WE
ARE GOING TO WAIVE COVERAGE BY
PARTICIPATING IN THIS PROCESS.
>> JUSTICE LEWIS'S CONCERNING
THE POLICY DOES NOT COVER
CONSTRUCTION DEFECTS, RIGHT TO
CHANGE THE COMMERCIAL GENERAL
LIABILITY POLICY IS INTERPRETED
BY THIS --
>> DOESN'T CARE THE QUALITY OF
THE WORK.
>> DEFECTIVE CONSTRUCTION IS NOT
COVERED.
ONLY PROPERTY DAMAGE.
>> YOU HAVE A PROCESS THAT
OFFERS AN OPPORTUNITY FOR A
CONTRACTOR TO DEAL WITH
CONSTRUCTION DEFECT ISSUES, WHEN
I LOOK AT THE DEFINITION OF
SUIT, THIS PROCESS, WHATEVER IT
IS DOESN'T LOOK LIKE WHAT I

WOULD THINK IS A PROCEEDING.
DOESN'T LOOK LIKE WHAT I THINK
IS A PROCEEDING, JUST COMMON
USES, IT DOESN'T LOOK LIKE WHAT
I WOULD THINK AS A CIVIL
PROCEEDING AND THEN IF YOU LOOK
AT THE REST OF THE LANGUAGE,
CIVIL PROCEEDING IN WHICH
DAMAGES, BECAUSE OF BODILY
INJURY, IT IS TALKING ABOUT A
CIVIL PROCEEDING DEALING WITH
WHAT THE POLICY COVERS, AND I'M
HARD TIME RECONCILING ALL THAT
LANGUAGE WITH THE PROCESS
DEFINED TO DEAL WITH
CONSTRUCTION DEFECT WHICH AREN'T
EVEN COVERED BY THE POLICY.
>> THESE CLAIMS INCLUDE PROPERTY
DAMAGE CLAIMS AND UNCOVERED
CLAIMS, WE THINK THEY ARE BROAD
ENOUGH AND SINCE IT IS A
CONDITION, WE ASKED THE COURT TO
CONSIDER THAT AS AN ISSUE
RELATIVE -- WHETHER THE PROCESS
IS GOING TO FUNCTION AND I
APOLOGIZE FOR THE TIME ISSUES.
>> YOU ARE EXPERIENCING
CONTRACTORS GENERALLY NEED TO
PARTICIPATE IN THESE
PROCEEDINGS.
>> I REPRESENT AS MANY FEDERAL
CONTRACTORS ON THESE ISSUES AS
ANYONE AND I AGREE WITH COUNSEL,
NONE OF MY CLIENTS EVER IGNORE
THE PROCESS, WE ALWAYS
PARTICIPATE.
>> THE ISSUE OF THE DEFINITION
FROM THE POINT OF VIEW, WHAT DID
YOU THINK YOU ARE GETTING
COVERAGE FOR?
I DON'T KNOW WHY I AM HUNG UP
BUT I AM ON SUBSECTION 15, EVEN
IF THEY CHOOSE TO SAY YOU ARE
NITPICKING, WE DID EVERYTHING
ENDS WHY ARE YOU FILING THIS
CLAIM, IF YOU ARE ASKED FOR
DISCOVERY IS THAT SOMETHING IF
YOU DON'T APPLY THE SUBSEQUENT
LAWSUIT?
>> THAT IS HOW TO INTERPRET THE

STATUTE.
I ADD AN ADDITIONAL COMPONENT,
WE ARE OVER TIME.
AN EXAMPLE FROM 6 TO 4.155, IT
SAYS YOU WILL GIVE NOTICE, 60
DAYS TO RESPOND, NOTHING IN THE
STATUTE THAT SAYS WHAT HAPPENS
IF YOU DON'T RESPOND BUT THIS
COURT INTERPRETED THE STATUTE
SAYING THERE IS A PRESUMPTION OF
BAD FAITH WHEN YOU DIDN'T
RESPOND.
THE COURT SYSTEM IS WITHIN THEIR
RATES TO CREATE BREVITY FOR
NONCOMPLIANCE WITH THE STATUTE.
>> THERE IS NO CASE LAW
INTERPRETING THAT.
>> HAS THIS EVER HAPPENED IN
YOUR CASE?
>> THERE HAVE BEEN ARGUMENTS AND
CLAIMS PEOPLE WHO DIDN'T
SANCTIONED IN THE LITIGATION.
THESE ISSUES COME UP IN TRIAL
COURT FREQUENTLY.
>> THE STATUTE CLEARLY SAYS THIS
IS AN ALTERNATIVE DISPUTE
RESOLUTION PROCESS, 558, SO THE
ONLY WAY THAT THIS WOULD FIT
INTO THE POLICY IS IF THE
INSURER AGREED THAT THE INSURER
COULD PARTICIPATE.
>> THAT IS ONE OF THE ACCEPTED
INCLUDING ALTERNATIVE DISPUTE TO
WHICH WE AGREE, COULD BE ANY
FORM OF CIVIL PROCEEDING AND
THIS POLICY WAS WRITTEN IN
FLORIDA TO A FLORIDA INSURED
CHAPTER 558, ONE OF THE COURT,
THE COLORADO DECISION SAID YOU
CONSENT TO THE A DR MECHANISMS
THAT EXIST IN THE LAW AND
JURISDICTION YOU WISH OF THE
POLICY, EVERY POLICY IS WRITTEN
PURSUANT TO THE LAW OF FLORIDA.
>> THE PROBLEM HERE IS THIS
REALLY APPEARS TO BE SO CLEARLY
A BREACH OF WARRANTY KIND --
THAT ARE COVERED UNDER THE
COMPREHENSIVE GENERAL LIABILITY.
>> I RESPECTFULLY DISAGREE.

THERE IS AN ABUNDANCE OF BOTH, THERE ARE CLAIMS THAT ARE JUST WARRANTY CLAIMS HANDLING THE 558 PROCESS I ABSOLUTELY AGREE, BUT THERE ARE TONS AND TONS OF CLAIMS INVOLVING PROPERTY DAMAGE.
>> I DO AGREE THAT IT SAYS THAT MUCH
>> THERE HAS TO BE PHYSICAL DAMAGE TO TANGIBLE PROPERTY BEYOND THE DEFECT OF WORK AND THOSE CASES COME TOO, WE SHOULD THROW THE BABY OUT WITH THE BATH WATER BECAUSE CLAIMS MIGHT NOT BE COVERED.
THERE IS NO PROPERTY DAMAGE, THEY DON'T HAVE TO DEFEND.
>> IF WE WOULD SAY THAT THIS IS NOT A CIVIL ACHIEVEMENTS, IF ANYTHING FALLS UNDER THE LAST CATEGORY OF A SORT OF KIND OF ALTERNATIVE DISPUTE.
>> MY CLIENT WOULD TAKE EITHER WAY OF WINNING, UNDEFINED TERM CIVIL PROCEEDING, AND THE DISPUTE RESOLUTION WHICH THEY FUNCTIONALLY CONSENTED.
AND A STORY ABOUT THE TIME.
>> WE GET PAID BY THE HOUR.
>> WHERE DO YOU PROFESS THE NEXT TIME YOU SHOW UP.
>> MAY IT PLEASE THE COURT, I AM HERE WITH COCOUNSEL HOLLY HARVEY AND WE REPRESENT CRUM & FORSTER SPECIALTY INSURANCE COMPANY AND WE ASKED TO ANSWER THE CERTIFIED QUESTION NO, THE 558 NOTICE DOES NOT CONSTITUTE A SUIT AS DEFINED BY THE INSURANCE POLICY AS JUDGE JORDAN POINTED THE OUT FROM THE 11TH CIRCUIT, AND THE STATE STATUTE, 558, WE WOULDN'T BE HERE.
>> THEY ARE SAYING THEY WILL CERTIFY THE QUESTION.
AND 558 PROCESS, CIVIL PROCEEDING, AND JL, WITH THE MEANING OF THE PROCEEDING, THE LONG-STANDING LAW, THE TERM,

WITH REASONABLE INTERPRETATIONS, ON THE SIDE OF REQUIRING THE TERM, THE ONE REASONABLE INTERPRETATION.
WHEN YOU ARGUE, AND VIGOROUSLY EXCLUDED, AND A LOT DEPENDS ON 558, WHAT IS YOUR ARGUMENT AS TO THE INTERPRETATION?
>> THE 11TH CIRCUIT RECOGNIZES FLORIDA LAW AND THEY ANSWER QUESTIONS OF FIRST IMPRESSION UNDER FLORIDA LAW ALL THE TIME. THEY PUT THAT IN THE OPINION BUT IF THEY FELT THEIR WASN'T, IF THEY FELT THERE WAS SUCH A REASONABLE DISAGREEMENT ABOUT THE TERMS ALL THEY HAD TO DO WAS THAT IS THE END OF IT.
>> I BEG TO DIFFER BECAUSE SINCE I HAVE BEEN ON THE CORE THE 11TH CIRCUIT CERTIFIED MORE INSURANCE CASES, OTHER THAN THAT INSURANCE INSURANCE.
>> I THINK THEY DEFER TO US, YOU AGREE IF IT IS REASONABLE THERE ARE TWO INTERPRETATIONS, MY PROBLEM IS THERE IS THIS IDEA THAT A PROCEEDING HAS TO INCLUDE A JUDGE OR SOMEBODY ON TOP BUT IF WE LOOKED AT THIS AS MEDICAL MALPRACTICE PURSUIT, THERE IS NOBODY IN THE MANDATORY PURSUIT PROCEEDING.
IT IS SOMETHING YOU GO THROUGH BEFORE YOU FILE A LAWSUIT.
>> CHAPTER 766 MANDATES THE INSURER'S PARTICIPATION.
>> I'M NOT ASKING WHAT THE LEGISLATURE IS SAYING.
I'M ASKING WHETHER THAT WOULD BE A PROCEEDING.
>> THE 766, PROCEEDING.
>> THE MANDATORY PURSUIT TO THE MALPRACTICE CASE.
>> I DON'T THINK SO.
>> DO YOU THINK THE ONLY WAY SOMETHING CAN BE A PROCEEDING AS IF THERE IS AN ADJUDICATOR?
>> YES.
>> THAT WOULD MAKE IT EASY IF

THAT WOULD END THE STORY SO WE WOULDN'T HAVE TO BE LABOR 558 IS MANDATORY OR VOLUNTARY.
SO NOW MY QUESTION IS WHEN THEY DEFINE THE SUIT AS INCLUDING PROCEEDING AND SAID INCLUDING ALTERNATIVE DISPUTE.
DIDN'T THEY BROADEN WHAT EXISTS BY NOT DEFINING IT AS A LAWSUIT, IT IS A PROCEEDING IN WHICH A JUDGE PRESIDES OR AN ADJUDICATOR.
THAT WOULD MAKE IT CLEAR.
>> TWO QUESTIONS CAME UP DURING ORAL ARGUMENT THAT ARE IMPORTANT TO FOCUS ON.
ONE IS YOU CAN'T DISAVOW THE LANGUAGE TO WHICH WE CAN SEND AND THE ARGUMENT IS YOU CAN'T CONSENT OR NOT CONSENT BECAUSE IT IS MANDATORY.
VERY IMPORTANT QUESTION, JUST ABOUT EVERY CONSTRUCTION CONTRACT IN THE STATE HAS A PRECONDITION, YOU GOT TO GIVE ME SOME NOTICE AND OPPORTUNITY TO REPAIR THE AIA CONTRACT, THE BIA, EVERYONE USES THAT.
WHY IS THAT A GOOD THING?
THINGS GET FIXED AND WE DON'T FILE LAWSUITS WITHOUT GIVING PEOPLE NOTICE AND OPPORTUNITY, THOSE NOTICES ARE JUST AS REQUIRED TO BRING BREACH OF CONTRACT ACTION AS OF 558 NOTICE FOR CONSTRUCTION DEFECT, IF ALL THOSE, IF THEY ARE AND ACT THAT IS PART OF THE PROCEEDING A BENEFIT IS BEFORE ANYTHING DOWN THE ROAD.
IT FOLLOWS ACTS CONSTITUTE CIVIL PROCEEDING, THE INSURER WILL HAVE TO DEFEND THE CONTRACT, 558 DOESN'T APPLY UNTIL THE CONSTRUCTION IS COMPLETE.
THEY ARE REQUIRED TO GIVE WITHIN TWO DAYS OR 21 DAYS UNDER MOST GENERAL CONTRACTS, WE COULD BE IN THE FIRST PHASE OF FRICTION.
SOME OF MY WORK IS DEFECTIVE AND

IT MIGHT IMPUGN OTHER CONTRACT WORK.
I PUT MY CARRIER ON NOTICE, YOU KNOW WHAT THEY CALL THAT?
NOTICE ONLY.
THEY SEND THE NOTICE IN EDITOR'S NOTICE ONLY, WHICH IS PLEASE DON'T JUMP IN ON THIS, WE ARE GOING TO REPAIR IT.
>> THEY ASSUME THE 558 IS FILED IF IT IS ONLY ABOUT REPAIRING DEFECTS, THEY STILL HAVE 2 NOTICE AND THEY DO NOTICE ONLY, BUT THAT IS CORRECT.
NOW YOU HAVE SAID, RESPECTFULLY SAY THE DIFFERENCE BETWEEN WHAT A CONTRACT MIGHT REQUIRE AND WHAT THE LAW REQUIRES IS YOU WOULD AGREE THAT THE 558 IS SOMETHING THE LEGISLATURE HAS SAID AND IT IS MANDATORY FOR THE CLAIMANT TO FILE THIS BEFORE THEY FILE A LAWSUIT.
>> IT IS PURSUING AND IF IT IS NOT DONE THE SUIT IS SUBJECT TO A DAY, YES.
>> NOW -- IS INVOLUNTARY THAT THEY PARTICIPATE?
FOR IN NOT?
>> THE DECISION WHETHER TO PARTICIPATE OR NOT HAS, INVOLVED IN IT, ONE OF THE INSTANCES I TELL YOU I AM NOT GOING TO RESPOND, I DENY THE CLAIM.
>> IS THAT SOMETHING THE INSURED IF WE ACCEPT YOUR DEFINITION CAN DO WITHOUT INPUT FROM THE INSURER?
>> PRESUMABLY.
IF ANY OF THE DEFECTS CLAIM MIGHT BE COVERED UNDER MY CGL POLICY I AM GOING TO PUT MY CARRIER ON NOTICE.
>> IT IS UP TO THEM TO DECIDE WHETHER TO COME IT OR NOT?
>> THAT IS PART OF IT.
AND SO, THERE IS A DEMAND FOR PURSUIT MEDIATION OR SOME OTHER CONTRACTUAL NOTICE AND I PUT THE CARRIER ON NOTICE AND WE HAVE

ENOUGH EXPOSURE ON THE COVERED CLAIMS THAT WE WANT TO BE INVOLVED, THEY HAVE THE RIGHT TO GET INVOLVED.
>> FOR THE INSURED, THEY ARE OUT THERE, JUSTICE LEWIS ASKED AT THE BEGINNING IS THE QUESTION OF 98%, NOT COVERED, TO PRESENT IS, WE ARE NOT ASKED TO BE DECIDING WHETHER THE CLAIMS, YOU AGREE WITH THAT BECAUSE THAT IS HARDER FOR ME TO BE SLICING AND ICING ON HERE, BUT ON THE OTHER HAND WOULD YOU AGREE IF THE INSURER LOOKS AND SAYS WE DON'T WANT TO DEFEND BUT THE INSURED IS LOOKING AT BIG EXPOSURE, THEY CAN'T MAKE A SETTLEMENT THAT IS COVERED BY THEIR POLICY ON THE PROPERTY DAMAGE.
THEY ARE HELD HOSTAGE BY THEIR OWN INSURER.
>> IF I AM FOLLOWING UP ON THE IDEA THAT THE VOLUNTARY PAYMENT IS GOING -- THE INSURER DECIDES NOT TO PARTICIPATE IS GOING TO RESULT IN NO COVERAGE FOR THAT VOLUNTARY PAYMENT
>> IF I FOLLOW THAT DOWN THE TRAIL A LITTLE BIT I HAVE A DEFECTIVE WINDOW, MY DEFECTIVE WINDOW THAT IS MY WINDOW ISN'T COVERED.
DURING THE 558 PROCESS, AND THERE IS NOTHING TO DEFEND.
I HAVE NEGOTIATED $40,000 PAYMENT, I WANT THAT PARTICIPATION.
IT GETS FILED, BRINGS DUTY TO DEFEND.
>> THEY COME OUT WITH $1 MILLION JUDGMENT IF THEY SETTLED FOR THAT.
AND WITH THE BEST INTERESTS.
>> IT IS MORE COMPLICATED THAN THAT BECAUSE AS JUDGE LAWSON POINTED OUT WE ARE TALKING ABOUT A CGL POLICY, NOT A PERFORMANCE BOND OR WARRANTY BOND, OR MEDICAL MALPRACTICE COVERAGE,

WHICH YOU BUY, YOU HAVE COVERAGE
FIRST DAY, LAST DAY.
THAT IS WHY THE CARRIER IS
MANDATED TO BE THERE, UP FRONT
AND CENTER FROM DAY ONE BECAUSE
THEY ARE IN.
THE QUESTION OF WHETHER A CGL
CARRIER HAS ANY MEANINGFUL
EXPOSURE IS DEFINITELY IN THIS
CASE THE RECORD, I DON'T THINK
THERE IS ANY DISPUTE, ON THE
ORDER OF 2% OF THE TOTAL AMOUNT
OF THE CLAIMS.
>> WE ARE NOT ASKED TO DECIDE
WHETHER THIS CASE, LET'S TAKE IT
THE OTHER WAY, SAY IT IS 98%,
THAT IT WOULD BE COVERED.
UNDER YOUR INTERPRETATION, IT
WOULD STILL NOT BE A PROCEEDING
IN WHICH THEY HAVE A DUTY TO
DEFEND.
SO IT IS -- THAT GOT ME FOR A
WHILE, THE 2% --
>> THAT IS NOT ANECDOTAL TO THIS
CASE.
ONE OF THE THINGS --
>> WE ARE NOT ASKED, IF THE
REVERSE WERE TRUE, 98% WAS THE
DAMAGE, TO PRESENT WAS THE
DEFECT, YOUR ANSWER WOULD BE THE
SAME.
>> IT IS THE SAME.
>> THE FACTS, IT IS THE NATURE
OF THE 558 PROCEDURE PROCEEDING
THAT IS WHAT WE GOT TO DECIDE.
>> IF WE LOOK AT 558, 550
LEGISLATURE STARTED BY SAYING IT
DOESN'T COUNT AS A CLAIM.
THE ONLY AMENDMENT IS IF YOU
WANT TO SPECIFICALLY PROVIDE,
BUT OTHER THAN THAT THE
CARRIERS, THE INSURER IS NOT
SUPPOSED TO BE FIRST PARTY, THEY
LOOK AT THIS EVERY YEAR.
IT DOESN'T -- IT DOESN'T SAY
THAT.
>> IF WE AGREE THIS IS NOT A
CIVIL PROCEEDING THAT IT IS IN
THE NATURE OF AN ALTERNATIVE
DISPUTE PROCESS AND UNDER YOUR

CONSENT, WITH COME UNDER THE
PARTY, YOU AGREE WITH THAT?
WHAT IS YOUR RESPONSE TO THE
ARGUMENT THAT THE INSURANCES,
YOU WROTE THIS POLICY IN FLORIDA
AND THAT AGREED TO OR IF WE CAN
SEND IS INVALID.
CANNOT BE ENFORCED BECAUSE OF
CHAPTER 558, BECAUSE OF THE
PROVISIONS IN THE FINAL
SUBSECTION, SUB -- SANCTIONS FOR
DISCOVERY VIOLATION, WE HAVE
SEEN UP TO AND INCLUDING A
DISMISSAL OF THE CLAIM OR ENTRY
OF THE DEFAULT.
WHAT IS YOUR RESPONSE TO THEIR
POSITION THAT THAT CANNOT BE
ENFORCED BECAUSE FLORIDA HAS
ESTABLISHED THIS PRE-ACTION,
CALL IT A PROCEEDING, IT IS
SOMETHING, THIS PRE-ACTION
SOMETHING IN CONNECTION WITH
THESE CLAIMS.
>> MY POSITION IS, OUR POSITION
IS THAT IS ASKING THE COURT TO
REWRITE THE CONTRACT, THE
INSURANCE DOCUMENT.
>> THE POINT BEING THERE
ARGUMENT, PLEASE REWRITE IT, IT
IS INVALID UNDER FLORIDA LAW
BECAUSE OF 558.
>> IT BECOMES CIRCULAR, I
CREATED A DUTY TO DEFEND BECAUSE
I HAVE REWRITTEN THE CONTRACT.
I DON'T THINK THE COURT --
>> THE LANGUAGE IN THE CONTRACT,
ANY OTHER ALTERNATIVE RESOLUTION
PROCEEDINGS IN WHICH SUCH
DAMAGES ARE CLAIMED AND THE
INSURANCE SUBMITS WITH OUR
CONSENT.
HOW COULD THE INSURANCE COMPANY
REASONABLY WITHHOLD CONSENT OF
THE INSURED ENGAGING IN THE 558
PROCESS.
>> THE INSURANCE SUBMITS WITH
OUR CONSENT, DEFINING THE
ALTERNATIVE DISPUTE RESOLUTION
PROCESS.
IF YOU LOOK AT WHAT ARBITRATIONS

APPLY THE ARBITRATIONS TO WHICH
THEY MUST SUBMIT, OR WHICH THEY
SUBMIT WITH OUR CONSENT, SO IN
THAT SAME SECTION, WE HAVE THAT
WHICH YOU MUST SUBMIT TO, SO
THIS COURSE WOULD HAVE TO REACH
OUT AND SAY BECAUSE YOU MUST
SUBMIT TO 558, WE ARE GOING TO
REWRITE THE INSURANCE POLICY AND
INSTALL THAT CONTRACT PROVISION.
>> I UNDERSTAND THE DISTINCTION
AND MEDIATION EXAMPLE UNDER
SUBSECTION B OF 18, IT IS A
LITTLE DIFFERENT BECAUSE IT IS
THERE, YOU COME OUT WITH THE
PROCESS, NONBINDING, YOU DON'T
HAVE TO SETTLE.
THIS IS AN EXPECTATION BY THE
LEGISLATURE THAT CONTRACTORS ARE
ENGAGING IN THE PROCESS.
FROM THE INSURANCE COMPANY'S
PERSPECTIVE, THE INSURANCE
ADMITS WITH OUR CONSENT DO I
READ THIS CORRECTLY THAT YOU AS
THE INSURER ARE RESPONSIBLE FOR
GIVING OR NOT GIVING CONSENT FOR
THEM TO ENGAGE IN THE PROCESS?
IS THAT WHAT THAT MEANS?
WHAT DOES THAT MEAN?
>> IT BECOMES A SUIT, IT
TRIGGERS A DUTY TO DEFEND WHEN
WE CONSENT.
>> WHEN IT SAYS TO WHICH THE
INSURED SUBMITS WITH OUR
CONSENT, WHAT DOES THAT LANGUAGE
MEAN?
>> I HAVE AN A THE ARE THAT I
SAY I WANT TO GO TO PURSUIT
MEDIATION.
>> THAT IS THE ALTERNATIVE
DISPUTE MECHANISM READ BY THE
LEGISLATURE, HOW DOES CONSENT
WORK IN THIS EXAMPLE?
>> GO TO 558, PUT THE CARRIER ON
NOTICE, A 558 CLAIM, IT IS OUR
INTENTION TO REPAIR, A FILE IS
OPEN, IT IS CALLED A NOTICE
ONLY.
>> THE CARRIER DOES GIVE OR DOES
NOT GIVE CONSENT FOR THAT

PROCESS, THEY JUST DO IT, THAT IS THEIR CHOICE.
WHAT DOES THE CONSENT GO TO?
>> CONSENT IS IN THIS CASE IT HAPPENS.
IF AT SOME POINT THE CARRIER SAYS ALL RIGHT, TIME FOR ME TO GET INVOLVED BECAUSE THE REPAIRS ARE NOT GETTING DONE TIMELY OR I'M CONCERNED ABOUT THE EXPOSURE OR WHATEVER REASON, THAT IS WHEN CONSENT PROVISION LANGUAGE COMES INTO PLAY, THAT MEANS THERE IS A DUTY TO DEFEND AT THAT POINT WHICH THEY ASSUMED BECAUSE THEY CAN SENSUALLY TAKE IT ON.
>> YOU THINK CONSENT LANGUAGE DOES NOT GO TO THERE ENGAGING IN ALTERNATIVES PROCESS IS BUT RATHER GOES TO THE CONSENT OF YOUR OWN COMPANY WHETHER YOU ENGAGE IN DEFENSE OR NOT?
>> YES.
>> WHAT HAPPENS?
YOU ARE EXPANDING WHAT A SUIT IS BECAUSE THERE IS STILL NO JUDGE OR ARBITRATOR SO THAT IS GOING BACK TO THIS ISSUE THAT IT SAYS INCLUDE AND IT IS WRITTEN IN FLORIDA WHERE THERE IS A MANDATORY 558.
I AM STILL HAVING TROUBLE WITH THIS IDEA OF THE INSURER DRIVING THE BUS FOR 558, LIKE HERE, IT WAS AFTER MONTHS AND MONTHS OF THEM BEING INVOLVED IN THIS THAT THE INSURED FINALLY SAYS RELYING ON THEIR OWN LAWYER, GET THEIR LAWYER OUT, WE ARE COMING IN, THAT DOESN'T SEEM LIKE, THAT SEEMS, THAT SEEMS LIKE THE INSURER IS ONLY LOOKING OUT FOR THEIR OWN INTERESTS, NOT FOR THE INSURED AND MAYBE I AM HUNG UP ON BAD FAITH WHICH IS NOT WHAT WE ARE TALKING ABOUT, BUT IT DOESN'T SEEM THE IDEA COVERAGE WOULD ENTIRELY TURN ON AT WHAT POINT AND INSURER DECIDES TO JUMP INTO THE PROCESS BUT THAT

IS WHAT YOU ARE ADVOCATING.
LET ME PLEASE COMMEND TO YOU THE ARGUMENTS IN OUR BRIEF, THIS IS WHAT HAPPENS.
IF WE GO PAST AND SO DO NOTICE ELITE ANYMORE, YOU GET A NOTICE TO DEFEND, EVERY CONTRACTOR WHO HAS GIVEN THAT NOTICE NOW HAS A LOSS FILE AND IT IS A LOST TRAIL AND NOW YOU HAVE CREATED THIS INSURANCE HISTORY.
ALL THESE NAMES CLAIMS, I AM NOT MAKING THIS ABOUT THE INSURANCE COMPANIES.
YOU KNOW WHO IT REALLY HITS?
THE SUBCONTRACTORS BECAUSE THE ADDITIONAL INSURED PROVISIONS IS WHERE IT IS GOING TO HIT.
ALL OF THEM GET PUT ON NOTICE AND THEY NOTICE THE CARRIER FINE AND THAT COUNTS AS A LOSS AT THAT MOMENT
>> THAT IS THE BOULDER IN THE POND.
>> THE POLICY EITHER WAY, ONE LAST QUESTION, SUBSECTION 15, IF THERE IS A NOTICE TO THE CONTRACTOR TO PRODUCE ANY OF THESE DOCUMENTS AND THEY DON'T PRODUCE IT, IS THERE A POTENTIAL FOR SANCTIONS IN THE EVENTUAL LAWSUIT?
>> THAT IS WHAT 15 SAYS SUCH SANCTIONS THE COURT MAY WANT TO EMPLOY.
>> A CONSEQUENCE FOR NOT COOPERATING.
>> SUIT FILED, IF THERE'S ANY DISPUTE, MOST DISCOVERY DISPUTES I HOPE NOT TO GET INTO TOO MANY, SOMEBODY SAYS I DIDN'T GET THOSE DOCUMENTS, LET ME GET THEM TO YOU.
WHAT HAS THIS COURT SEEN OVER AND OVER, WHAT SANCTIONS ARE AVAILABLE AT THAT POINT?
I WON'T TELL YOU IT IS NOT GOING TO HAVE ANY CONSEQUENCE AT ALL BUT THAT IS IT EACH EVERYTHING ELSE ABOUT 558 SAYS KEEP THE

INSURERS BACK HERE.
THE LEGISLATURE DECIDED IS THE BEST WAY TO GET REPAIRS DONE FOR CONSTRUCTION DEFECTS IN OUR STATE.
>> A COUPLE MINUTES.
>> I WILL BE VERY BRIEF.
WE HAD AN AMAZING ADMISSION ON BEHALF OF CRUM & FORSTER WHICH IS THEY ARE ABANDONING THIS ARGUMENT THAT THE 10 EDITION OF BLACK WHICH IS A VERY RESTRICTIVE DEFINITION OF CIVIL PROCEEDING CONTROLS, EVEN WHAT WE JUST HEARD WITH RESPECT TO THE SECOND PRONG OF THE DEFINITION OF THE POLICY, THAT DOESN'T COMPORT WITH THE 10TH EDITION OF CIVIL PROCEEDING.
THE POLICY ITSELF DEFINES CIVIL PROCEEDING MORE BROADLY THAN A 10 EDITION OF BLACKS WHERE IT GIVES EXAMPLES OF AVR PROVISIONS AND PROCEEDINGS GOVERNED UNDER THE DEFINITION OF THE TERM SUIT.
IT IS NOT AN EXCLUSIVE LIST.
IT USES THE WORD INCLUDES WHICH THIS COURT HELD USED AND EXPANSIVE, NOT A NARROWING LIST WAS THEY CHOSE TO DEFINE IT THAT WAY.
THE OTHER POINT THAT IS IMPORTANT TO MAKE, THE LEGISLATURE SPECIFICALLY WANTED TO KEEP THE INSURERS AWAY FROM 558.
NOT TRUE.
>> WOULD YOU AGREE WITH COUNSEL THAT THE INSURANCE COMPANY'S CONSENT IS NOT REQUIRED TO ENGAGE IN 558?
>> SAY THAT ONE MORE TIME.
>> WOULD YOU AGREE THAT THE INSURANCE COMPANY'S CONSENT UNDER THE POLICY IS NOT REQUIRED FOR THE CONTRACTOR TO ENGAGE IN A 558 PROCEEDING?
>> TO, THEY DO NOT SENSE BUT IF A CONTRACTOR IS GOING TO SETTLE THE CLAIM THERE IS GOING TO BE

POTENTIAL VIOLATION OF THE
VOLUNTARY PAYMENT PROGRAM
CARRIER IS NOT ENGAGED.
WHAT THE LEGISLATURE HAS DONE IF
YOU LOOK ACROSS THE CANAL I ATE
WHICH 558.001, IT IS ETHICALLY
SAYS IT IS GRANTING THE INSURER
OF THE CONTRACTOR AN OPPORTUNITY
TO RESOLVE THE CLAIM THROUGH
CONFIDENTIAL SETTLEMENT
NEGOTIATIONS.
LEGISLATURE INTENDED TO INCLUDE
THE INSURER.
WHAT THE LEGISLATURE CLARIFIED
AND BULLARD -- CRUM & FORSTER
AGREED TO WAS ASCENDANCE OUT OF
558.004 SUBPART 13 WHICH SAID
EVERY TIME YOU RECEIVE NOTICE OF
CLAIM IT IS NOT A CLAIM FROM A
POLICY EATING, YOU DON'T HAVE TO
NOTIFY YOUR CARRIER.
IT WASN'T CLEARLY STATED IN THE
STATUTES, THE LEGISLATURE
CLARIFIED INTENT AND EXCEPT TO
THE EXTENT THE POLICY SAYS
OTHERWISE THEY ABANDONED THAT
ARGUMENT BUT THAT WAS THE
ARGUMENT IF YOU LOOK AT THE
RECORD THAT THEY WERE RELYING
ON.
WHAT WE HAVE NOW IS AN AGREEMENT
BY CRUM & FORSTER THAT THE
DEFINITION IS BROADER THAN THAT
WE 10 EDITION OF BLACKS, MORE
THAN A JUDICIAL HEARING THOUGH
THAT MAY BE ONE REALISTIC
DEFINITION.
WE AGREE THAT IT IS AT LEAST A
DR UNDER THE DEFINITION OF
POLICY BUT I SUBMIT TO THE COURT
THAT WHILE WE ARE A DR WE DON'T
FALL WITHIN SPECIFIC PARAMETERS.
THIS IS SOMETHING WE HAVE
SUBMITTED TO.
LIKE WE WOULD MEDIATION OR A
CONTRACTUAL NOTICE PROVISION.
WE DIDN'T SUBMIT TO THE STORE
SIGN A DOCUMENT AGREEING.
WE HAVE BEEN COMPELLED BY THE
LANGUAGE OF THE STATUTE WHICH

HAS MANDATORY PROVISIONS WHICH
THE COURT HELD THE MANDATORY
LANGUAGE CONTROLS EVEN IF THERE
IS NO PENALTY, WE ARE COMPELLED
TO COMPLY WITH IT AND ALTHOUGH
WE ARE A DR WHICH CRUM & FORSTER
AGREED IS COVERED UNDER THIS, IT
SHOULDN'T REQUIRE THE CONSENT
AND IF IT DOES REQUIRE CONSENT,
THEY CAN'T POSSIBLY BE ENTITLED
TO ENFORCE AND DENY THAT BECAUSE
WE ARE REQUIRED BY THE
LEGISLATURE TO COMPLY.
THANK YOU VERY MUCH.
>> THE COURT IS IN RECESS.