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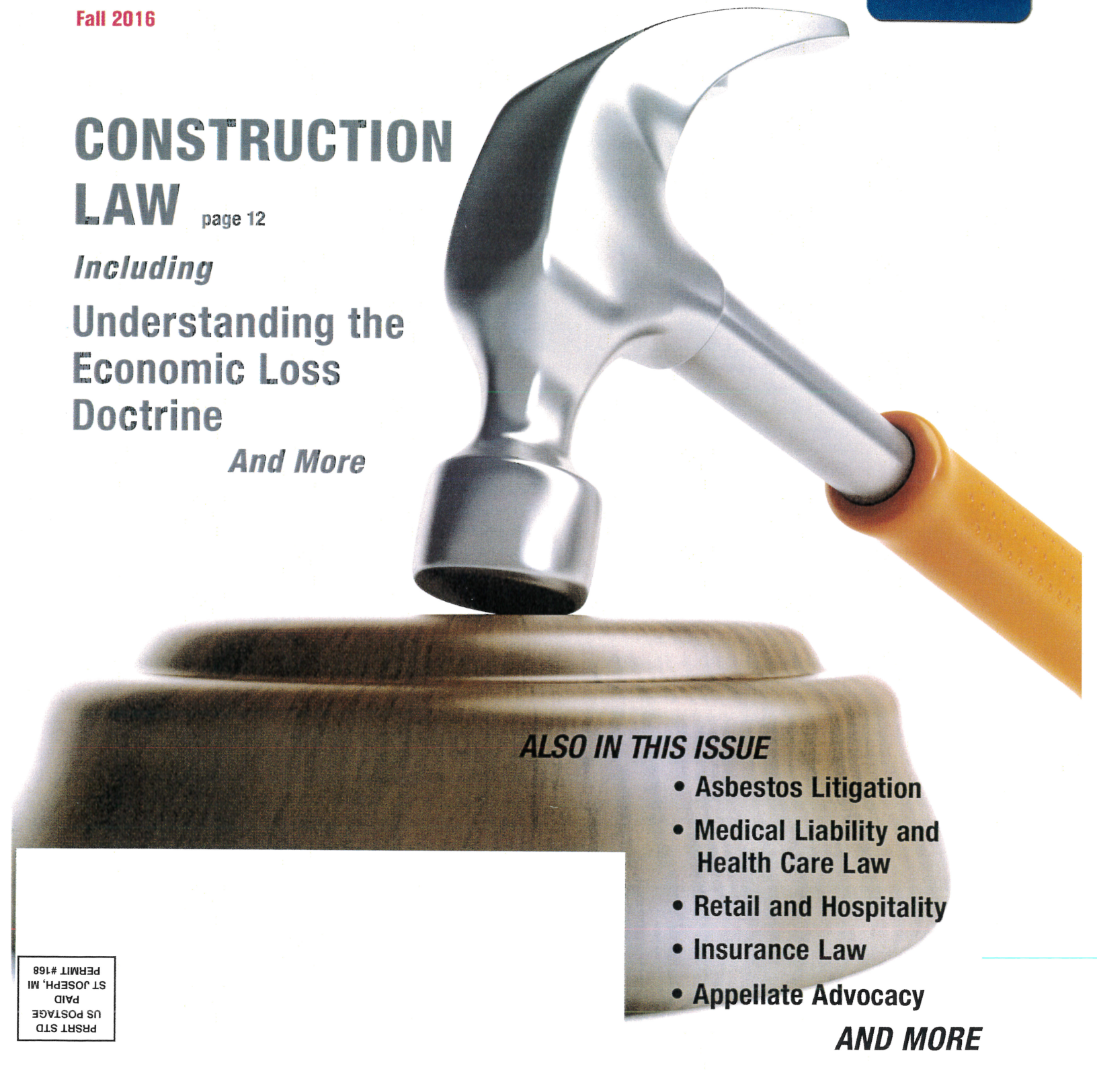
Fall 2016



CONSTRUCTION LAW page 12

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Understanding the Economic Loss Doctrine

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- Asbestos Litigation
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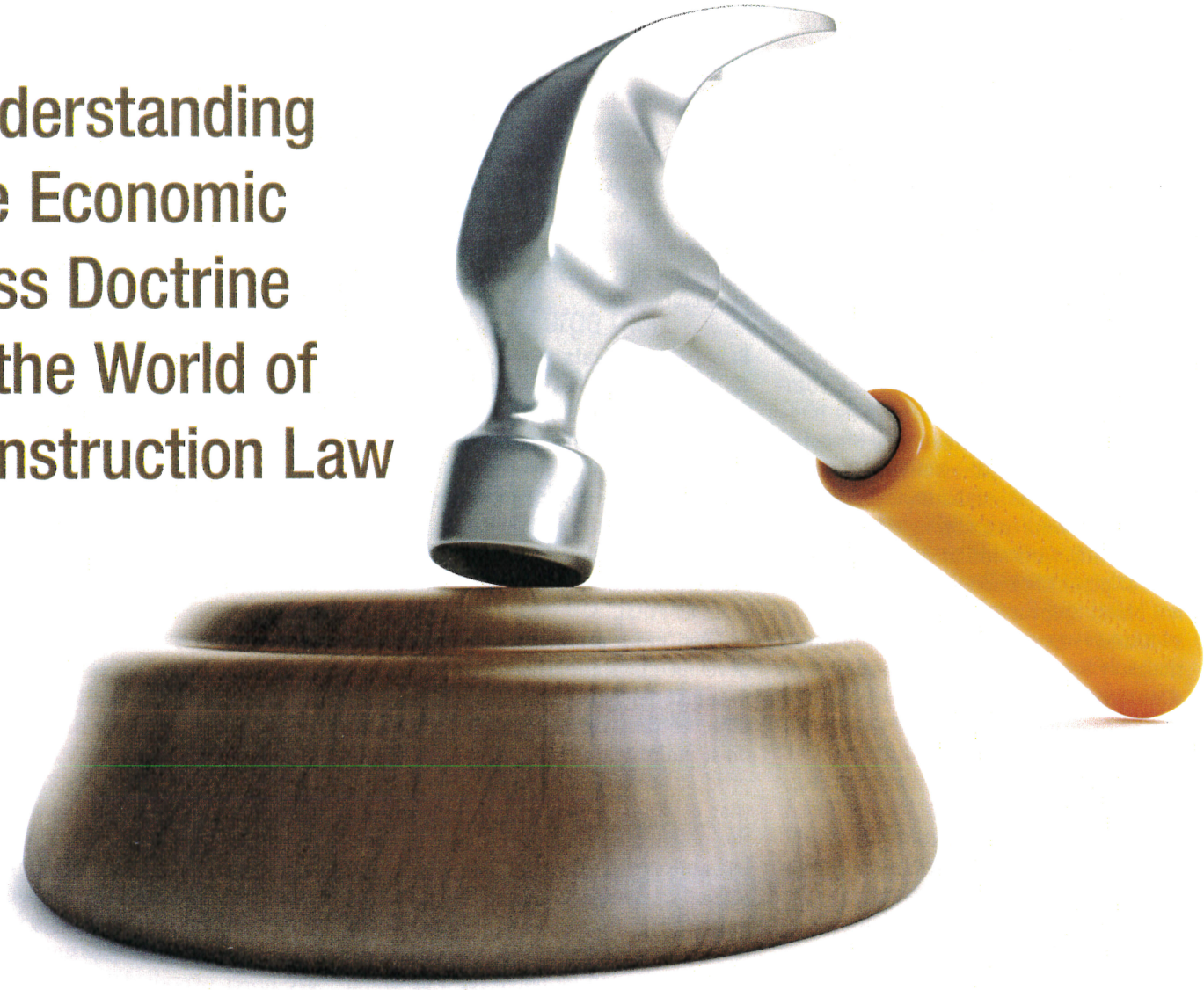
By Andrew L. Smith

Understanding the Economic Loss Doctrine in the World of Construction Law



Summary

Under the "economic loss doctrine," a party who suffers only economic harm may recover damages for harm based only upon a contractual claim and not on a tort theory, such as negligence or strict liability. Tort law provides a basis for recovering for personal injury or property damage. By contrast, economic loss includes damages for disappointed expectations such as lost profits, delay damages, loss of benefit of the bargain, and the reduced value of property. The doctrine is a misunderstood creature, to say the least. The doctrine attempts to determine the boundaries between tort and contract law principles. If properly utilized, the economic loss doctrine is one of the strongest defenses to any tort case and is especially appropriate in the realm of construction law.

The economic loss doctrine has been recognized or applied in various fashions in courts throughout the United States. However, the doctrine is not uniform, and its application does not exactly bring about consistent results in courts in different states. Courts throughout the country have drastically limited the scope of the doctrine. Some courts have eliminated it completely and do not focus on privity of contract between parties when evaluating economic loss damages. Other courts have carved out exceptions to the doctrine. Still other courts focus on the details of the relationship between the parties and attempt

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to locate a substitute for the privity of contract requirement.

The economic loss doctrine is a powerful tool in some jurisdictions to limit and eliminate damages in any tort lawsuit where privity of contract between the parties is lacking, which is commonplace in the world of construction law. Depending on the jurisdiction, there are a myriad of potential exceptions to the traditional economic loss doctrine holding that privity of contract is required where a plaintiff sues a defendant for purely economic loss in a construction law case.

Introduction

The economic loss doctrine is a misunderstood creature, an enigma of the law. The doctrine struggles to define the boundaries between tort and contract law principles. If properly utilized, the economic loss doctrine is one of the strongest defenses to any tort case and is especially appropriate in the realm of construction law. In some circumstances, as illustrated throughout this article, the doctrine can be applied to eliminate any form of recovery for traditional tort damages.

As used in relation to the economic loss doctrine, "economic loss" is a term of art.

> It does not refer to all economic loss, but only to economic loss that would be recoverable as damages in a normal contract suit. Purely economic loss is generally defined as the loss of the benefit of the user's bargain, including pecuniary damage for inadequate value, the cost of repair and replacement of the defective product, or consequent loss of profits, without any claim of personal injury or damage to other property.

Giles v. GMAC, 494 F.3d 865, 869 (9th Cir. Nev. 2007).

Indeed, "[e]conomic loss, as we view it, is the loss of the benefit of the user's bargain." *Fireman's Fund American Ins. Cos. v. Burns Electronic Sec. Services, Inc.*, 93 Ill. App.3d 298, 300 (Ill.App.Ct. 1st Dist. 1980). For instance, when analyzing product liability matters, it is the loss of the service the product was supposed to render, including loss consequent upon the failure of the product to meet the level of performance expected of it in the consumer's business or the loss resulting from a product "inferior quality," which "does not work for the general purposes for which it was manufactured and sold." *Id.*

This article will first discuss the privity of contract requirement. Jurisdictions differ as to whether privity of contract is required to recover purely economic damages. The majority of states follow the traditional rule that privity of contract between the parties is required to pursue recovery for these damages. On the other hand, an increasing minority of states follow the rule that privity of contract is not required to pursue recovery of purely economic damages, essentially voiding the economic loss doctrine.

Privity of Contract Requirement: Majority View

The case of *Corporex Development & Construction Management Inc. v. Shook Inc.* provides the following rationale for the rule:

> "[T]he well-established general rule is that a plaintiff who has suffered only economic loss due to another's negligence has not been injured in a manner that is legally cognizable or compensable." This rule stems from the recognition of a balance between tort law, designed to redress losses suffered by breach of a duty imposed by law to protect societal interests, and contract law, which holds that "parties to a commercial transaction should remain free to govern their own affairs." "Tort law is not designed... to compensate parties for losses suffered as a result of a breach of duties assumed only by agreement. That type of compensation necessitates an analysis of the damages which were within the contemplation of the parties when framing their agreement. It remains the particular province of the law of contracts."

Corporex Dev. & Constr. Mgmt. Inc. v. Shook Inc., 835 N.E.2d 701, 704 (Ohio 2005) (alterations in original) (citations omitted) (quoting *Chemtrol Adhesives Inc. v. Am. Mfrs. Mut. Ins. Co.*, 537 N.E.2d 624, 628, 630 (1989); *Floor Craft Floor Covering Inc. v. Parma Cmty. Gen. Hosp. Ass'n*, 560 N.E.2d 206, 211 (Ohio 1990)).

The *Corporex* case follows the majority view in the United States, *i.e.*, a party who suffers only economic harm may recover damages for harm based only upon a contractual claim and not on a tort theory, such as negligence or strict liability. States following this viewpoint include Alabama, Colorado, Delaware, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, West Virginia, Wisconsin, and Wyoming. *See Alloway v. General Marine Indus. L.P.*, 695 A.2d 264 (N.J. 1997); *Keyes v. Guy Bailey Homes Inc.*, 439 So. 2d 670, 672–73 (Miss. 1983); *Westerhold v. Carroll*, 419 S.W.2d 73, 79 (Mo. 1967); *AAA Excavating Inc. v. Francis Constr. Inc.*, 678 S.W.2d 889, 893 (Mo. Ct. App. 1984); *Oceanside at Pine Point Condominiums v. Peachtree Doors Inc.*, 659 A.2d 267 (Me. 1995); *Indem. Ins. Co. of N. Am. v. Aviation Inc.*, 891 So.2d 532 (Fla. 2004); *Laurens Elec. Coop. Inc. v. Altec Indus. Inc.*, 889 F.2d 1323, 1326 (4th Cir. 1989) (applying statute providing for strict liability in a products liability case); *Ramey Constr. Co. v. Apache Tribe of Mescalero Reservation*, 673 F.2d 315, 321 (10th Cir. 1982) (contractor could not recover because there was no misrepresentation or negligence); *Ellis-Don Constr. Inc. v. HKS Inc.*, 353 F. Supp. 2d 603, 606–07 (M.D.N.C. 2004) (finding that a design professional exception exists); *Full Faith Church of Love W. Inc. v. Hoover Treated Wood Prods. Inc.* 224 F. Supp. 2d 1285, 1291 (D. Kan. 2002); *Palco Linings Inc. v. Pavex Inc.*, 755 F. Supp. 1269, 1272 (M.D. Pa. 1990); *Flow Indus. Inc. v. Fields Constr. Co.*, 683 F. Supp. 527, 529 (D. Md. 1988); *Lloyd Wood Coal Co. v. Clark Equip. Co.*, 543 So. 2d 671 (Ala. 1989); *Town of Alma v. AZCO Constr. Inc.*, 10 P.3d 1256, 1266 (Colo. 2000); *Danforth v. Acorn Structures Inc.*, 608 A.2d 1194, 1199 (Del. 1992); *City Express Inc. v. Express Partners*, 959 P.2d 836, 840 (Haw. 1998) ("[A] tort action for negligent misrepresentation alleging damages based purely on economic loss is not available to a party in privity of contract with a design professional."); *Salmon Rivers Sportsman Camps Inc. v. Cessna Aircraft Co.*, 544 P.2d 306, 312 (Idaho 1975) ("[P]rivity of contract is required in a contract action to recover economic loss for

breach of implied warranty."); *2314 Lincoln Park W. Condo. Ass'n v. Mann, Gin, Ebel & Frazier*, Ltd., 555 N.E.2d 346, 351–52 (Ill. 1990) (holding that plaintiff could not recover because plaintiff did not plead negligent or intentional misrepresentation); *Anderson Elec. Inc. v. Ledbetter Erection Corp.*, 503 N.E.2d 246, 249 (Ill. 1986); *Santucci Constr. Co. v. Baxter & Woodman Inc.*, 502 N.E.2d 1134, 1137 (Ill. 1986); *Moorman Mfg. Co. v. Nat'l Tank Co.*, 435 N.E.2d 443, 448 (Ill. 1982); *Fence Rail Dev. Corp. v. Nelson & Assocs., Ltd.*, 528 N.E.2d 344, 348 (Ill. App. Ct. 1988); *Bates & Rogers Constr. Corp. v. N. Shore Sanitary Dist.*, 471 N.E.2d 915, 924–25 (Ill. App. Ct. 1984); *Indianapolis-Marion Cnty. Pub. Library v. Charlier Clark & Linard, P.C.*, 929 N.E.2d 722, 739 (Ind. 2010); *Annett Holdings Inc. v. Kum & Go, L.C.*, 801 N.W. 2d 499, 506 (Iowa 2011); *Cincinnati Ins. Cos. v. Staggs & Fisher Consulting Eng'rs Inc.*, No. 2008-CA-002395-MR, 2013 WL 1003543, at *1 (Ky. Ct. App. Mar. 15, 2013) ("Kentucky adopted the economic loss doctrine in *Real Estate Market Inc. v. Franz*, [885 S.W.2d 921 (Ky.1994)]. Kentucky expressly joined the majority rule prohibiting tort recovery for economic losses absent contractual privity."); *Tasco Constr. Inc. v. Town of Winchendon*, No. 910308C, 1994 WL 879613, at *2 (Mass. Super. Ct. Feb. 11, 1994); *Neibarger v. Universal Coops. Inc.*, 486 N.W.2d 612, 618 (Mich. 1992) ("[T]hat where a plaintiff seeks to recover for economic loss caused by a defective product purchased for commercial purposes, the exclusive remedy is provided by the UCC, including its statute of limitations."); *Hapka v. Paquin Farms*, 458 N.W.2d 683, 688 (Minn. 1990) ("[T]he Uniform Commercial Code must control exclusively with respect to damages in a commercial transaction which involves property damage only...."); *Jim's Excavating Serv. Inc. v. HKM Assocs.*, 878 P.2d 248, 255 (Mont. 1994) (holding economic loss doctrine has a design professional exception); *Lesiak v. Cent. Valley Ag Co-op. Inc.*, 808 N.W.2d 67, 81 (Neb. 2012) ("[T]he economic loss doctrine precludes tort remedies only where the damages caused were limited to economic losses and where either (1) a defective product caused the damage or (2) the duty which was allegedly breached arose solely from the contractual relationship between the parties."); *Nat'l Union Fire Ins. Co. v. Pratt & Whitney Can. Inc.*, 815 P.2d 601, 603 (Nev. 1991) ("We deem it safe to conclude, however, that the economic loss doctrine was never intended to apply to construction projects that reflect the products and efforts of so many different manufacturers, laborers, crafts, supervisors and inspectors in the creation of an essentially permanent place of habitation."); *Plourde Sand & Gravel Co. v. JGI E. Inc.*, 917 A.2d 1250 (N.H. 2007); *In re Consol. Vista Hills Retaining Wall Litig.*, 893 P.2d 438 (N.M. 1995); *Bocre Leasing Corp. v. Gen. Motors Corp.*, 645 N.E.2d 1195 (N.Y. 1995); *Leno v. K & L Homes Inc.*, 803 N.W.2d 543 (N.D. 2011); *Coop. Power Ass'n v. Westinghouse Elec. Corp.*, 493 N.W.2d 661, 666 (N.D. 1992); *Floor Craft Floor Covering Inc.*, 560 N.E.2d at 212; *Chemtrol Adhesives Inc.*, 537 N.E.2d at 635 ("[A] commercial buyer seeking recovery from the seller for economic losses resulting from damage to the defective product itself may maintain a contract action for breach of warranty under the Uniform Commercial Code; however, in the absence of injury to persons or damage to other property the commercial buyer may not recover for economic losses premised on tort theories of strict liability or negligence."); *Lutz Eng'g Co. v. Indus. Louvers Inc.*, 585 A.2d 631 (R.I. 1991); *Kreisers Inc. v. First Dakota Title Ltd. P'ship*, 852 N.W.2d 413, 421 (S.D. 2014); *Messer Griesheim Indus. Inc. v. Cryotech of Kingsport, Inc.*, 131 S.W.3d 457, 463 (Tenn. Ct. App. 2003); *Mid Continent Aircraft Corp. v. Curry Cnty. Spraying Serv.* Inc., 572 S.W.2d 308, 313 (Tex. 1978) (holding that in commercial transactions, pure economic loss is remedied only by the Uniform Commercial Code); *SME Indus. Inc. v. Thompson, Ventulett, Stainback & Assocs. Inc.*, 28 P.3d 669 (Utah 2001); *Long Trail House Condo. Ass'n v. Engelberth Constr. Inc.*, 59 A.3d 752 (Vt. 2012); *Sensenbrenner v. Rust, Orling & Neale, Architects Inc.*, 374 S.E.2d 55 (Va. 1988); *Aikens v. Debow*, 541 S.E.2d 576 (W. Va. 2000); *Digicorp Inc. v. Ameritech Corp.*, 662 N.W.2d 652 (Wis. 2003); *Excel Constr. Inc. v. HKM Eng'g Inc.*, 228 P.3d 40 (Wyo. 2010).

A commonplace application of the majority view occurred in the case of *Floor Craft Floor Covering Inc. v. Parma Community General Hospital Association*, which involved alleged tort liability for purely economic loss against a design professional accused of drafting defective plans and specifications for a construction project. *Floor Craft Floor Covering Inc.*, 560 N.E.2d 206.

In that case, Floor Craft, a flooring installation contractor, entered into a construction contract with Parma Hospital for the installation of vinyl floor covering in a renovation project. *Id.* at 207. Braun & Spice, an architectural firm, prepared plans and specifications for the project. *Id.*

After Floor Craft completed installation of the flooring, bubbles of varying size began to appear on the floor. *Id.* Floor Craft subsequently brought a negligence suit against Parma Hospital and Braun & Spice to recover damages caused by the flooring defects. *Id.*

Floor Craft alleged that Braun & Spice negligently specified flooring and sealant incompatible with the construction project. *Id.* Because Parma Hospital also asserted claims against Floor Craft stemming from the project defects claiming damages in excess of $100,000, Floor Craft asserted a claim of indemnity and contribution against Braun & Spice for replacement of the failed flooring. *Id.*

> The Ohio Supreme Court reasoned
>
> [T]here was no direct contractual relationship between Floor Craft (the contractor) and Braun & Spice (the architect). Floor Craft contracted directly with the owner Parma Hospital. There is no nexus here that can serve as a substitute for contractual privity. Therefore, since there was no privity of contract between Floor Craft and Braun & Spice, the court of appeals properly affirmed the trial court's dismissal for failure to state a cause of action.

Id. Ultimately, the claims for economic loss asserted against Braun & Spice were dismissed, leaving Floor Craft liable for damages caused by the flooring defects claimed by Parma Hospital. *Id.*at 212.

Likewise, in *Santucci Construction Co. v. Baxter & Woodman Inc.*, a construction company contracted with a town to construct sewer and water facilities. *Santucci Constr. Co.*, 502 N.E.2d at 1135. Before entering into that contract, the town con-

tracted with an engineering service to provide professional services for the project. *Id.* The construction company then instituted a lawsuit against the engineering service for negligence, intentional interference with contractual relationships, and interference with prospective advantage. *Id.* at 1136. The Illinois Court of Appeals, 2nd District, held that the construction contractor could not recover purely economic losses from an architect or engineer where it had no written contract. *Id.* at 1137–38.

Similarly, in *Lutz Engineering Co. v. Industrial Louvers Inc.*, the Rhode Island Supreme Court held that an architect was not liable to a subcontractor for negligent approval of shop drawings prepared by the subcontractor's supplier. *Lutz Eng'g Co.*, 585 A.2d at 635.

These cases are just a few examples across the country that show how the majority view of the economic loss doctrine can eliminate a plaintiff's potential damages when it comes to attempted recovery of pure economic harm under a tort theory, such as negligence or strict liability.

Privity of Contract Requirement: Minority View

A minority of states takes the opposite view and do not require privity of contract for a party to pursue economic loss damages. This viewpoint essentially eviscerates the economic loss doctrine as any form of defense in construction cases. These states reason that the absence of privity is not a bar to the recovery of economic losses arising from a construction project. This view is based on the proposition that the distinction between property damage and personal injury is arbitrary because, in either case, the defendant's conduct caused the harm and, therefore, the defendant should be liable for all resulting harm. *Lincoln General Ins. Co. v. Detroit Diesel Corp.*, 293 S.W.3d 487 (Tenn. 2009).

States following this viewpoint include Alaska, Arkansas, Colorado, Connecticut, Louisiana, Oklahoma, South Carolina, and Washington. *See Mattingly v. Sheldon Jackson Coll.*, 743 P.2d 356, 360 (Alaska 1987); *Bayer CropScience LP v. Schafer*, 385 S.W.3d 822, 832 (Ark. 2011) ("[T]his court has declined to recognize the economic-loss doctrine in cases of strict liability, as we allow the recovery of purely economic losses, even where the damage relates only to the defective product."); *Town of Alma v. Shanks*, 10 P.3d 1256 (Colo. 2010); *Ulbrich v. Groth*, 78 A.3d 76, 102 (Conn. 2013) ("[W]e conclude that the economic loss doctrine does not bar claims arising from a breach of contract, including a breach of a contract for the sale of goods covered by the UCC, when the plaintiff has alleged that the breach was accompanied by intentional, reckless, unethical or unscrupulous conduct."); *Farrell Constr. Co. v. Jefferson Parish*, 693 F. Supp. 490, 491–92 (E.D. La. 1988); *Milton J. Womack Inc. v. House of Representatives*, 509 So. 2d 62, 67 (La. Ct. App. 1987); *Gurtler, Hebert & Co. v. Weyland Mach. Shop Inc.*, 405 So. 2d 660, 663 (La. Ct. App. 1981); *Boren v Thompson & Assoc.*, 999 P.2d 438 (Okla. 2000); *Beachwalk Villas Condo. Ass'n v. Martin*, 406 S.E.2d 372, 374 (S.C. 1991) (holding that architects may be liable to homebuyers, even if there is no privity of contract); *Seattle W. Indus. Inc. v. David A. Mowat Co.*, 750 P.2d 245 (Wash. 1988).

A minority of states takes the opposite view and do not require privity of contract for a party to pursue economic loss damages. This viewpoint essentially eviscerates the economic loss doctrine as any form of defense in construction cases. These states reason that the absence of privity is not a bar to the recovery of economic losses arising from a construction project.

For example, in *Seattle Western Industries Inc. v. David A. Mowat Co.*, a Washington court held that a subcontractor could, in fact, pursue economic loss in the form of delay damages against an architect under a claim of negligence. *Seattle W. Indus. Inc.*, 750 P.2d at 249.

Even those states that apply the traditional economic loss doctrine, requiring privity of contract between the parties to recover purely economic damages, allow several exceptions for the recovery of purely economic damages in the absence of privity. These exceptions, including the "sufficient nexus" exception and the "other property" exception, will be discussed at length below.

"Sufficient Nexus" Substitute

Determining whether a "sufficient nexus" is present in the absence of a contract between the parties to invoke the economic loss doctrine is subject to a case-by-case, fact-intensive inquiry and, correspondingly, is a topic of great debate. The following illustrative cases offer helpful guidance.

- **Subcontractor's limited knowledge of a project does not provide a sufficient nexus.** "[M]ere knowledge by [a] subcontractor of the identity of the project owner, without more, does not create a nexus sufficient to establish privity or its substitute" for a tort claim in a breach of contract dispute. *Corporex Dev. & Constr. Mgmt. v. Shook Inc.*, 835 N.E.2d 701, 705 (Ohio 2005).
- **Subcontractor's ability to make minor changes to plans does not provide a nexus.** The role as intermediary in a construction project three days a week and the ability to make minor changes in the building plans was not a sufficient nexus to avoid the economic loss doctrine. *Mosser Constr. Inc. v. W. Waterproofing Co.*, No. L-05-1164, 2006 WL 1944934, at *4 (Ohio Ct. App. July 14, 2006).
- **Subcontractor's attendance at meetings equals an insufficient nexus.** A sufficient nexus was not present where an engineering firm did not exercise direct

control over the contractor but instead simply attended meetings, conducted inspections, and certified completion of various levels of the project. *Ohio Plaza Assocs. Inc. v. Hillsboro Assocs.*, No. 96CA898, 1998 WL 394370, at *7–8 (Ohio Ct. App. June 29, 1998).

- **Subcontractor giving orders and exercising substantial authority provides a sufficient nexus.** Where an engineering company that designed a sewer tunnel exercised substantial control over the project, a sufficient nexus was established to substitute for contractual privity and avoid the economic loss doctrine. In particular, the engineering company's engineers were present at the construction site and gave orders about the project, including ordering the removal of concrete segments and the application of additional grouting. *Clevecon Inc. v. Ne. Ohio Reg'l Sewer Dist.*, 628 N.E.2d 143, 146–47 (Ohio Ct. App. 1993) ("The power of the architect to stop the work is tantamount to a power of economic life or death over the contractor. It is only just that such authority, exercised in such a relationship, carry commensurate legal responsibility.").
- **Design professional's power to stop a project may provide a sufficient nexus.** "[A] design professional is not liable for third-party economic damages when he or she does not participate in the project or interact with the contractor and signs a standard contract providing the design professional no role in construction means, methods, techniques, or procedures; [however,] a design professional who exercises 'excessive control over the contractor' through the power to stop the work and give orders about the project is liable for such economic damages." *Nicholson v. Turner/Cargile*, 669 N.E.2d 529, 535 (Ohio Ct. App. 1995) (quoting *Clevecon Inc.*, 628 N.E.2d at 147).

Overall, absent direct contractual privity between the parties, the focus of courts is on the degree of control that the defendant has over the overall construction project. The more power and control, the more likely the court will find a sufficient nexus to avoid application of the economic loss doctrine.

The "Other Property" Exception

Traditionally, if damage extends beyond the defective part at issue, the economic loss doctrine is not applicable. *KB Home v. Superior Court*, 5 Cal. Rptr. 3d 587, 590 (Cal. Ct. App. 2003). In *KB Home v. Superior Court,* a homebuilder sued a furnace manufacturer alleging negligence, strict product liability, and other claims, seeking to recover the cost of repairing and replacing allegedly defective furnaces installed in the builder's homes. *Id.* The court held that the economic loss rule barred the builder from recovering tort damages for the cost of repairing and replacing the furnaces. *Id.* at 592. The appeals court reversed, holding that the economic loss doctrine did not bar the homebuilder from recovering damages for the cost of repairing and replacing the defective furnaces on theories of strict liability and negligence and entered an order permitting KB Home to proceed with those claims. *Id.* at 598.

However, more modern courts are now split between two main views on the "other property" economic loss doctrine exception.

First View

Under the first view, courts have ruled that contract remedies should cover all damages caused by goods acquired under the contract, and that tort remedies should only apply to items not contemplated in the contract. *See generally Saratoga Fishing Co. v. J.M Martinac & Co.*, 520 U.S. 875 (1997).

For example, in *Saratoga Fishing Co. v. J.M. Martinac & Co.,* a second-hand boat owner claimed tort damages when the boat's original hydraulic system failed, sinking the boat and causing damage to items installed by the first owner. *Id.* at 877. The U.S. Supreme Court held that the second-hand boat owner could recover in tort for damages to products added by the initial owner, reasoning that "initial users typically depend upon, and likely seek warranties that depend upon, a manufacturer's primary business skill, namely, the assembly of workable product components into a marketable whole." *Id.* at 883.

Second View

Under the second view, courts hold that tort claims for damage to other property are barred by the economic loss doctrine if those losses are direct and consequential losses within the contemplation of the parties and could have been the subject of negotiations between the parties. *Detroit Edison Co. v. Nabco Inc.*, 35 F.3d 236, 241 (6th Cir. 1994). In *Detroit Edison Co. v. Nabco Inc.,* the owner of a power plant brought action against the pipe supplier in an effort to recover damages incurred as a result of an explosion of a pipe. *Id.* at 238. The explosion damaged much of the surrounding property. *Id.* The pipe manufacturer sought summary judgment under the economic loss doctrine, arguing that the Uniform Commercial Code (UCC) should govern the owner's possible remedies. *Id.* The 6th Circuit applied Michigan's economic loss doctrine in favor of the pipe manufacturer. *Id.* at 243.

Likewise, in the case of *Dakota Gasification Co. v. Pascoe Building Systems*, the owner of a synthetic fuel plant filed suit against the structural steel subcontractor involved in the original construction of the plant because the roof of the plant collapsed under the weight of ice and snow, causing significant damage to equipment and other property within the plant. *Dakota Gasification Co. v. Pascoe Bldg. Sys.*, 91 F.3d 1094, 1096–97 (8th Cir. 1996). The owner alleged that the roof collapsed due to faulty welds in the structural steel. *Id.* at 1096. The 8th Circuit held that North Dakota's economic loss doctrine barred recovery under the tort remedies relied upon by the owner. *Id.* at 1101. Here, the court rejected claims for damages that are "a foreseeable result of a defect at the time the parties contractually determined their respective exposure to risk, regardless [of whether] the damage… [is done] to 'other property.'" *Id.* at 1099.

Conclusion

The economic loss doctrine has been recognized or applied in various fashions in courts throughout the United States. However, the doctrine is not uniformly applied by courts. The doctrine is a powerful tool to limit and eliminate damages in any tort lawsuit where a party suffers only economic harm and availability of a contractual claim is absent. Depending on your particular jurisdiction, there are a myriad of potential exceptions to the traditional doctrine.