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THE ECONOMIC LOSS RULE IN FLORIDA

In Indemnity Ins. Co. of North America v. American Aviation, Inc., 29 Fla. L. Weekly S815 (Fla. Dec. 23, 2004), the Supreme Court reviewed in a scholarly opinion the economic loss rule in the State of Florida and strictly limited it to specific classifications.

The opinion arose from a case in which an airplane made a “gear up” landing after the defendant, during maintenance done on the aircraft, allegedly put a bearing in the gear in backwards. The Federal District Court dismissed the tort claim with prejudice on the basis of the economic loss rule and the Eleventh Circuit sent a series of certified questions to the Florida Supreme Court to determine the applicability of that rule in Florida.

The opinion explains the basis for the economic loss rule, which prohibits a tort claim in certain cases where only economic losses are suffered.

The economic loss rule has been applied to prevent negligent actions where economic damages are suffered in cases in two circumstances. The first is in cases in which the parties are in contractual privity with each other under the theory that parties who have entered into a contract are limited to the terms of the contract and cannot circumvent that contract by seeking to claim losses beyond the contractual provisions. At Page 816, the Court holds:

Underlying this rule is the assumption that the parties to a contract have allocated the economic risks of nonperformance through the bargaining process. A party to a contract who attempts to circumvent the contractual agreement by making a claim for

economic loss in tort is, in effect, seeking to obtain a better bargain than originally made. Thus, when the parties are in privity, contract principles are generally more appropriate for determining remedies for consequential damages that the parties have, or could have, addressed through their contractual agreement.

The second basis for barring a claim for economic loss only arises in circumstances in which a machine injures itself as the result of a manufacturing defect. In this opinion, the Court reviews the evolution of products liability law in Florida from one where lack of privity precluded even a personal injury action based upon a product defect to the adoption of strict liability in tort. The Court then reviews the evolution of economic loss in Florida arising out of a product defect, which ultimately upheld the supremacy of warranty law over tort law as the applicable remedy. The Court reviews the U.S. Supreme Court case of East River Steamship Corp. v. Transamerica Delaval, Inc., 476 U.S. 858 (1986), the California Supreme Court case of Seely v. White Motor Co., 403 P.2d 145 (Cal. 1965) and the Florida Supreme Court case of Florida Power & Light Co. v. Westinghouse Electric Corp., 510 So. 2d 899 (Fla. 1987). In the latter case, the Supreme Court of Florida adopted the economic loss rule in products liability cases rejecting both negligence and strict liability in favor of warranty law. At Page 818 in the case under review, the Court holds:

The economic loss rule adopted in *Florida Power* represents this Court's pronouncement that, notwithstanding the theory of strict liability adopted in *West*, strict liability has not replaced warranty law as the remedy for frustrated economic expectations in the sale of goods. In exchange for eliminating the privity

requirements of warranty law and *expanding* the tort liability for manufacturers of defective products which cause personal injury, we expressly limited tort liability with respect to defective products to injury caused to persons or damage caused to property other than the defective product itself. In this regard, we also note that the products liability economic loss rule articulated in *Seely* and *East River*, and adopted by this Court in *Florida Power*, applies even in the absence of privity of contract.

In the case under consideration, the Court refuses to expand the law beyond that described above. The Court reiterates that in cases where the parties are in privity and have negotiated remedies for nonperformance of a contract, the economic loss rule prohibits an action in tort. The Court, however, specifically limits the products liability economic loss rule to cases in which the product injures itself rather than other property. In the latter case, tort law can apply. The Court also reaffirms cases, whether or not involving privity of contract, where causes of action exist outside of contract such as in professional negligence, fraudulent and negligent misrepresentations or other free standing statutory causes of action. The Court holds that in the case under consideration since there was neither privity nor a manufacturing defect, which results in injury to the product, an action for tort would lie.

Thus it appears that while the economic loss rule is alive and well in Florida, it is strictly limited to specific circumstances.

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