

Wisconsin Court of Appeals Extends Economic Loss Doctrine To Bar Negligence Claims Between Subcontractors On Interrelated Contracts

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Practice Area: Construction Law and Litigation

On April 22, 2020, the Wisconsin Court of Appeals (District II) affirmed a Waukesha County Circuit Court holding that barred a subcontractor's negligence claim against another subcontractor, both of whom entered into separate subcontracts with the general contractor for a project, under the economic loss doctrine.

In *Mechanical v. Venture Electrical Contractors, Inc.*, 2018AP2380 (recommended for publication), Mechanical and Venture had separate subcontracts with the general contractor to provide HVAC and electrical work, respectively, for a \$36 million addition of a research laboratory to the owner's building. Both of the subcontracts incorporated the terms of the Contract between the owner and the general contractor.

During the course of construction, Venture requested Mechanical perform additional work outside the parties' respective subcontracts with the general contractor. After performing such work and Venture's failure to pay, Mechanical commenced suit. Venture counter-claimed for delay damages based on Mechanical's alleged untimely performance. Mechanical moved for summary judgment on the grounds that the economic loss doctrine barred Venture's negligence claim because Venture's contract with the general contractor addressed the potential for delay damages and limited the remedy to additional time. The Waukesha County Circuit Court granted Mechanical's summary judgment motion, from which Venture appealed.

Since 1989, Wisconsin courts have held the economic loss doctrine prohibits a party to a contract from pursuing tort remedies (such as punitive damages) to recover solely economic losses arising out of the performance or nonperformance of the contract. *Sunnyslope Grading, Inc. v. Miller, Bradford & Risberg, Inc.*, 148 Wis. 2d 910, 437 N.W.2d 213 (1989).

Upon appeal, the Court of Appeals affirmed, holding that "because the complaining subcontractor's negligence claim is rooted in the duties imposed by the interrelated construction contracts, contract law provides the remedies for the economic loss at issue, foreclosing tort remedies. The economic loss doctrine bars the negligence claim."

Finally, the Court of Appeals noted public policy considerations helped guide their decision. It stated

The application of the economic loss rule to the general contract, and by extension, these two non-contracting subcontractors, encourages the subcontractors on construction projects with interrelated contractors to protect themselves from risks, holds them to the terms of their bargain, enforces their expectancy interests, and maintains the boundary between contract and tort law.

Entities engaged in construction services are encouraged to be mindful of the protections afforded by the economic loss doctrine, as well as the risks involved.

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